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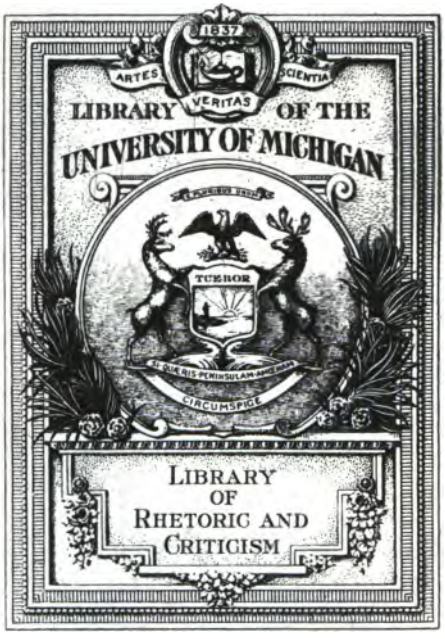

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A LETTER

ON

THE DURATION OF PARLIAMENTS.

TO THE CHAIRMAN OF

THE BUCKINGHAMSHIRE MEETING,[1]

HELD ON THE 18TH APRIL, 1780, AT AYLESBURY.

SIR,

Having heard yesterday by mere accident that there is an intention of laying before the county meeting *new matter which is not contained in our petition*, and the consideration of which had been deferred to a fitter time by a majority of our committee in London; permit me to take this method of submitting to you my reasons for thinking, with our committee, that nothing ought to be hastily determined upon the subject.

Our petition arose naturally from distresses which we *felt;* and the requests which we made were in effect nothing more, than that such things should be done in parliament, as it was evidently the duty of parliament to do. But the affair, which will be proposed to you by a person of rank and ability, is an alteration in the constitution of parliament itself. It is impossible for you to have a subject before you of more importance, and that requires a more cool and more mature consideration, both on its own account, and for the credit of our sobriety of mind who are to resolve upon it.

The country will, in some way or other, be called upon to declare it your opinion, that the House of Commons is not

[1] The meeting of the freeholders of the county of Buckingham, which occasioned the following letter, was called for the purpose of taking into consideration a petition to parliament for shortening the duration of parliaments, and for a more equal representation of the people in the House of Commons.

31

sufficiently numerous, and that the elections are not sufficiently frequent: that a hundred new knights of the shire ought to be added; and that we are to have a new election once in three years for certain, and as much oftener as the king pleases. Such will be the state of things, if the proposition made shall take effect.

All this may be proper. But, as an honest man, I cannot possibly give my vote for it until I have considered it more fully. I will not deny that our constitution may have faults; and that those faults, when found, ought to be corrected; but, on the whole, that constitution has been our own pride, and an object of admiration to all other nations. It is not everything which appears at first view to be faulty in such a complicated plan that is to be determined to be so in reality. To enable us to correct the constitution, the whole constitution must be viewed together; and it must be compared with the actual state of the people, and the circumstances of the time. For that which, taken singly and by itself, may appear to be wrong, when considered with relation to other things may be perfectly right; or at least such as ought to be patiently endured, as the means of preventing something that is worse. So far with regard to what at first view may appear a *distemper* in the constitution. As to the *remedy* of that distemper, an equal caution ought to be used; because this latter consideration is not single and separate, no more than the former. There are many things in reformation which would be proper to be done, if other things can be done along with them; but which, if they cannot be so accompanied, ought not to be done at all. I therefore wish, when any new matter of this deep nature is proposed to me, to have the whole scheme distinctly in my view, and full time to consider of it. Please God, I will walk with caution whenever I am not able clearly to see my way before me.

I am now growing old. I have from my very early youth been conversant in reading and thinking upon the subject of our laws and constitution, as well as upon those of other times, and other countries. I have been for fifteen years a very laborious member of parliament; and in that time have had great opportunities of seeing with my own eyes the working of the machine of our government, and remarking

where it went smoothly and did its business, and where it checked in its movements, or where it damaged its work. I have also had and used the opportunities of conversing with men of the greatest wisdom and fullest experience in those matters; and I do declare to you most solemnly and most truly, that on the result of all this reading, thinking, experience, and communication, I am not able to come to an immediate resolution in favour of a change of the ground-work of our constitution; and, in particular, that in the present state of the country, in the present state of our representation, in the present state of our rights and modes of electing, in the present state of the several prevalent interests, in the present state of the affairs and manners of this country, the addition of a hundred knights of the shire, and hurrying election on election, will be things advantageous to liberty or good government.

This is the present condition of my mind; and this is my apology for not going as fast as others may choose to go in this business. I do not by any means reject the propositions—much less do I condemn the gentlemen who, with equal good intentions, with much better abilities, and with infinitely greater personal weight and consideration than mine, are of opinion, that this matter ought to be decided upon instantly.

I most heartily wish that the deliberate sense of the kingdom on this great subject should be known. When it is known it *must* be prevalent. It would be dreadful indeed, if there was any power in the nation capable of resisting its unanimous desire, or even the desire of any very great and decided majority of the people. The people may be deceived in their choice of an object. But I can scarcely conceive any choice they can make to be so very mischievous as the existence of any human force capable of resisting it. It will certainly be the duty of every man, in the situation to which God has called him, to give his best opinion and advice upon the matter; it will *not* be his duty, let him think what he will, to use any violent or any fraudulent means of counteracting the general wish, or even of employing the legal and constructive organ of expressing the people's sense against the sense which they do actually entertain.

In order that the real sense of the people should be known

upon so great an affair as this, it is of absolute necessity that timely notice should be given; that the matter should be prepared in open committees, from a choice into which no class or description of men is to be excluded—and the subsequent county meetings should be as full, and as well attended, as possible. Without these precautions the true sense of the people will ever be uncertain. Sure I am, that no precipitate resolution on a great change in the fundamental constitution of any country can ever be called the real sense of the people.

I trust it will not be taken amiss, if, as an inhabitant and freeholder of this county, (one indeed among the most inconsiderable,) I assert my right of dissenting (as I do dissent fully and directly) from any resolution whatsoever on the subject of an alteration in the representation and election of the kingdom *at this time*. By preserving this right, and exercising it with temper and moderation, I trust I cannot offend the noble proposer, for whom no man professes, or feels, more respect and regard than I do. A want of concurrence in *everything* which *can* be proposed will in no sort weaken the energy, or distract the efforts, of men of upright intentions upon those points in which they are agreed. Assemblies that are met, and with a resolution to be all of a mind, are assemblies that can have no opinion at all of their own. The first proposer of any measure must be their master. I do not know that an amicable variety of sentiment, conducted with mutual good will, has any sort of resemblance to discord; or that it can give any advantage whatsoever to the enemies of our common cause. On the contrary, a forced and fictitious agreement (which every universal agreement must be) is not becoming the cause of freedom. If, however, any evil should arise from it, (which I confess I do not foresee,) I am happy that those who have brought forward new and arduous matter, when very great doubts, and some diversity of opinion, must be foreknown, are of authority and weight enough to stand against the consequences.

I humbly lay these my sentiments before the county. They are not taken up to serve any interests of my own, or to be subservient to the interests of any man or set of men under heaven. I could wish to be able to attend our meeting, or that I had time to reason this matter more fully by

letter; but I am detained here upon our business. What you have already put upon us is as much as we can do. If we are prevented from going through it with any effect, I fear it will be in part owing, not more to the resistance of the enemies of our cause, than to our imposing on ourselves such tasks as no human faculties, employed as we are, can be equal to. Our worthy members have shown distinguished ability and zeal in support of our petition. I am just going down to a bill brought in to frustrate a capital part of your desires. The minister is preparing to transfer the cognizance of the public accounts from those whom you and the constitution have chosen to control them to unknown persons, creatures of his own. For so much he annihilates parliament.

I have the honour, &c.

Charles Street,
12th April, 1780.

EDMUND BURKE.

TRACTS,

RELATIVE

TO THE LAWS AGAINST POPERY IN IRELAND.[1]

I.

Fragments of a Tract on the Popery Laws.

THE PLAN.

I PROPOSE, first, to make an Introduction, in order to show the propriety of a closer inspection into the affairs of

[1] The condition of the Roman Catholics in Ireland appears to have engaged the attention of Mr. Burke at a very early period of his political life. It was probably soon after the year 1765 that he formed the plan of a work upon that subject, the fragments of which are now given to the public. No title is prefixed to it in the original manuscript: and the plan, which it has been thought proper to insert here, was evidently designed merely for the convenience of the author. Of the first chapter some unconnected fragments only, too imperfect for publication, have been found. Of the second there is a considerable portion, perhaps nearly the whole;

Ireland; and this takes up the first Chapter; which is to be spent in this introductory matter, and in stating the Popery Laws in general as one leading cause of the imbecility of the country.

Ch. II. states particularly the Laws themselves in a plain and popular manner.

Ch. III. begins the Remarks upon them, under the heads of, 1st, The object, which is a numerous people. 2dly, Their meanes, a restraint on property. 3dly, Their instruments of execution, corrupted morals; which affect the national prosperity.

Ch. IV. The impolicy of those Laws as they affect the national security.

Ch. V. Reasons by which the Laws are supported, and answers to them.

CHAPTER II.

In order to lay this matter with full satisfaction before the reader, I shall collect into one point of view, and state, as shortly and as clearly as I am able, the purport of these laws, according to the objects which they affect, without making at present any further observation upon them, but just what shall be necessary to render the drift and intention of the legislature, and the tendency and operation of the laws, the more distinct and evident.

but the copy from which it is printed is evidently a first rough draught. The third chapter, as far as it goes, is taken from a fair, corrected copy; but the end of the second part of the first head is left unfinished; and the discussion of the second and third heads was either never entered upon, or the manuscript containing it has unfortunately been lost. What follows the third chapter appears to have been designed for the beginning of the fourth, and is evidently the first rough draught; and to this we have added a fragment which appears to have been a part either of this or the first chapter.

In a subsequent part of this volume will be seen a more particular account of the part which he took in the discussion of this great political question. At present it may suffice to say, that the letter to Mr. Smith, the second letter to Sir Hercules Langrishe, and the letter to his son, which here follow, in order, the Fragment on the Popery Laws, are the only writings upon this subject found amongst his papers in a state fit to appear in this stage of the publication.

What remain are some small fragments of the tract, and a few letters containing no new matter of importance.

I shall begin with those which relate to the possession and inheritance of landed property in Popish hands. The first operation of those acts upon this object was wholly to change the course of descent by the common law; to take away the right of primogeniture; and in lieu thereof to substitute and establish a new species of statute gavelkind. By this law, on the death of a Papist possessed of an estate in fee simple, or in fee tail, the land is to be divided by equal portions between all the male children; and those portions are likewise to be parcelled out, share and share alike, amongst the descendants of each son, and so to proceed in a similar distribution *ad infinitum*. From this regulation it was proposed that some important consequences should follow. First, By taking away the right of primogeniture perhaps in the very first generation, certainly in the second, the families of Papists, however respectable, and their fortunes, however considerable, would be wholly dissipated, and reduced to obscurity and indigence, without any possibility that they should repair them by their industry or abilities; being, as we shall see anon, disabled from every species of permanent acquisition. Secondly, By this law the right of testamentation is taken away, which the inferior tenures had always enjoyed; and all tenures, from the 27th Hen. VIII. Thirdly, The right of settlement was taken away, that no such persons should, from the moment the act passed, be enabled to advance themselves in fortune or connexion by marriage, being disabled from making any disposition in consideration of such marriage but what the law had previously regulated; the reputable establishment of the eldest son, as representative of the family, or to settle a jointure, being commonly the great object in such settlements, which was the very power which the law had absolutely taken away.

The operation of this law, however certain, might be too slow. The present possessors might happen to be long lived. The legislature knew the natural impatience of expectants, and upon this principle they gave encouragement to children to anticipate the inheritance. For it is provided, that the eldest son of any Papist shall, immediately on his conformity, change entirely the nature and properties of his father's legal estate; if he before held in fee simple, or, in other words, had the entire and absolute dominion over the land, he is reduced

to an estate for his life only, with all the consequences of the natural debility of that estate; by which he becomes disqualified to sell, mortgage, charge, (except for his life,) or in any wise to do any act by which he may raise money for relief in his most urgent necessities. The eldest son, so conforming, immediately acquires,—and in the life-time of his father,—the permanent part, what our law calls the reversion and inheritance, of the estate, and he discharges it by retrospect; and annuls every sort of voluntary settlement made by the father ever so long before his conversion. This he may sell or dispose of immediately, and alienate it from the family for ever.

Having thus reduced his father's estate, he may also bring his father into the court of chancery, where he may compel him to swear to the value of his estate; and to allow him out of that possession, (which had been before reduced to an estate for life,) such an immediate annual allowance as the lord chancellor or lord-keeper shall judge suitable to his age and quality.

This indulgence is not confined to the eldest son. The other children, likewise, by conformity may acquire the same privileges, and in the same manner force from their father an immediate and independent maintenance. It is very well worth remarking that the statutes have avoided to fix any determinate age for these emancipating conversions; so that the children, at any age, however incapable of choice in other respects, however immature, or even infantile, are yet considered sufficiently capable to disinherit their parents, and totally to subtract themselves from their direction and control, either at their own option, or by the instigation of others. By this law the tenure and value of a Roman Catholic in his real property is not only rendered extremely limited, and altogether precarious; but the paternal power is in all such families so enervated, that it may well be considered as entirely taken away; even the principle upon which it is founded seems to be directly reversed. However, the legislature feared that enough was not yet done upon this head; the Roman Catholic parent, by selling his real estate, might in some sort preserve the dominion over his substance and his family, and thereby evade the operation of these laws, which intended to take away both. Besides, frequent revolutions and many conversions had so broken the landed pro-

perty of Papists in that kingdom, that it was apprehended that this law could have in a short time but a few objects upon which it would be capable of operating.

To obviate these inconveniences another law was made, by which the dominion of children over their parents was extended universally throughout the whole Popish part of the nation, and every child of every Popish parent was encouraged to come into what is called a court of equity, to prefer a bill against his father, and compel him to confess, upon oath. the quantity and value of his substance, personal as well as real, of what nature soever, or howsoever it might be employed; upon which discovery the court is empowered to seize upon and allocate, for the immediate maintenance of such child or children, any sum not exceeding a third of the whole fortune; and as to their future establishment on the death of the father, no limits are assigned; the chancery may, if it thinks fit, take the whole property, personal as well as real, money, stock in trade, &c., out of the power of the possessor, and secure it in any manner they judge expedient for that purpose; for the act has not assigned any sort of limit with regard to the quantity which is to be charged, or given any direction concerning the means of charging and securing it: a law which supersedes all observation.

But the law is still more extensive in its provision. Because there was a possibility that the parent, though sworn, might by false representations evade the discovery of the ultimate value of his estate, a new bill may be at any time brought by one, any, or all, of the children for a further discovery; his effects are to undergo a fresh scrutiny, and a new distribution is to be made in consequence of it. So that the parent has no security against perpetual inquietude, and the reiteration of chancery suits, but by (what is somewhat difficult for human nature to comply with) fully, and without reserve, abandoning his whole property to the discretion of the court, to be disposed of in favour of such children.

But is this enough, and has the parent purchased his repose by such a surrender? Very far from it. The law expressly and very carefully provides that he shall not; before he can be secure from the persecution of his children it requires another and a much more extraordinary condition; the children are authorized, if they can find that their parent has by

his industry, or otherwise, increased the value of his property since their first bill, to bring another, compelling a new account of the value of his estate, in order to a new distribution proportioned to the value of the estate at the time of the new bill preferred. They may bring such bills, *toties quoties*, upon every improvement of his fortune, without any sort of limitation of time, or regard to the frequency of such bills, or to the quantity of the increase of the estate, which shall justify the bringing them. This act expressly provides that he shall have no respite from the persecution of his children but by totally abandoning all thoughts of improvement and acquisition.

This is going a great way surely; but the laws in question have gone much further. Not satisfied with calling upon children to revolt against their parents, and to possess themselves of their substance, there are cases where the withdrawing of the child from his father's obedience is not left to the option of the child himself; for if the wife of a Roman Catholic should choose to change her religion, from that moment she deprives her husband of all management and direction of his children, and even of all the tender satisfaction which a parent can feel in their society, and which is the only indemnification he can have for all his cares and sorrows; and they are to be torn for ever, at the earliest age, from his house and family; for the lord chancellor is not only authorized, but he is strongly required, to take away all his children from such Popish parent, to appoint where, in what manner, and by whom, they are to be educated; and the father is compelled to pay, not for the ransom, but for the deprivation of his children; and to furnish such a sum as the chancellor thinks proper to appoint for their education, to the age of eighteen years. The case is the same if the husband should be the conformist; though how the law is to operate in this case I do not see: for the act expressly says that the child shall be taken from such Popish parent. And whilst such husband and wife cohabit, it will be impossible to put it into execution without taking the child from one as well as from the other; and then the effect of the law will be, that if either husband or wife becomes Protestant, both are to be deprived of their children.

The paternal power thus being wholly abrogated, it is

evident that by the last regulation the power of a husband over his wife is also considerably impaired; because if it be in her power, whenever she pleases, to subtract the children from his protection and obedience, she herself by that hold inevitably acquires a power and superiority over her husband.

But she is not left dependent upon this oblique influence; for if in any marriage settlement the husband has reserved to him a power of making a jointure, and he dies without settling any, her conformity executes his powers, and executes them in as large extent as the chancellor thinks fit. The husband is deprived of that coercive power over his wife which he had in his hands by the use he might make of the discretionary power reserved in the settlement.

But if no such power had been reserved, and no such settlement existed, yet if the husband dies leaving his conforming wife without a fixed provision by some settlement on his real estate, his wife may apply to chancery, where she shall be allotted a portion from his leases, and other personal estate, not exceeding one-third of his whole clear substance. The laws in this instance, as well as in the former, have presumed that the husband has omitted to make all the provision which he might have done, for no other reason than that of her religion. If, therefore, she chooses to balance any domestic misdemeanours to her husband by the public merit of conformity to the Protestant religion, the law will suffer no plea of such misdemeanours to be urged on the husband's part, nor proof of that kind to be entered into. She acquires a provision totally independent of his favour, and deprives him of that source of domestic authority which the common law had left to him,—that of rewarding, or punishing, by a voluntary distribution of his effects, what in his opinion was the good or ill behaviour of his wife.

Thus the laws stand with regard to the property already acquired, to its mode of descent, and to family powers. Now as to the new acquisition of real property, and both to the acquisition and security of personal, the law stands thus:

All persons of that persuasion are disabled from taking or purchasing directly, or by trust, any lands, any mortgage upon land, any rents or profits from land, any lease, interest, or term of any land; any annuity for life or lives, or years,

or any estate whatsoever, chargeable upon, or which may in any manner affect, any lands.

One exception, and one only, is admitted by the statutes to the universality of this exclusion, viz. a lease for a term not exceeding thirty-one years. But even this privilege is charged with a prior qualification. This remnant of a right is doubly curtailed; 1st, that, on such a short lease, a rent not less than two-thirds of the full improved yearly value, at the time of the making it, shall be reserved during the whole continuance of the term; and 2ndly, it does not extend to the whole kingdom. This lease must also be in possession, and not in reversion. If any lease is made, exceeding either in duration or value, and in the smallest degree, the above limits, the whole interest is forfeited, and vested *ipso facto* in the first Protestant discoverer or informer. This discoverer, thus invested with the property, is enabled to sue for it as his own right. The courts of law are not alone open to him; he may (and this is the usual method) enter into either of the courts of equity, and call upon the parties, and those whom he suspects to be their trustees, upon oath, and under the penalties of perjury, to discover against themselves the exact nature and value of their estates in every particular, in order to induce their forfeiture on the discovery. In such suits the informer is not liable to those delays which the ordinary procedure of those courts throws into the way of the justest claimant; nor has the Papist the indulgence which he allows to the most fraudulent defendant, that of plea and demurrer. But the defendant is obliged to answer the whole directly upon oath. The rule of *favores ampliandi*, &c. is reversed by this act, lest any favour should be shown, or the force and operation of the law in any part of its progress be enervated. All issues to be tried on this act are to be tried by none but known Protestants.

It is here necessary to state as a part of this law, what has been for some time generally understood as a certain consequence of it. The act had expressly provided that a Papist could possess no sort of estate which might affect land (except as before excepted). On this a difficulty did, not unnaturally, arise. It is generally known, a judgment being obtained, or acknowledged, for any debt since the statute of

Westm. 2, 13 Ed. I. c. 18, one half of the debtor's land is to be delivered unto the creditor until the obligation is satisfied, under a writ called *Elegit*, and this writ has been ever since the ordinary assurance of the land, and the great foundation of general credit in the nation. Although the species of holding under this writ is not specified in the statute, the received opinion, though not juridically delivered, has been, that if they attempt to avail themselves of that security, because it may create an estate, however precarious, in land, their whole debt or charge is forfeited, and becomes the property of the Protestant informer. Thus you observe, first, that by the express words of the law all possibility of acquiring any species of valuable property, in any sort connected with land, is taken away: and secondly, by the construction, all security for money is also cut off. No security is left, except what is merely personal, and which, therefore, most people who lend money would, I believe, consider as none at all.

Under this head of the acquisition of property, the law meets them in every road of industry, and in its direct and consequential provisions throws almost all sorts of obstacles in their way. For they are not only excluded from all offices in church and state, which, though a just and necessary provision, is yet no small restraint in the acquisition; but they are interdicted from the army and the law in all its branches. This point is carried to so scrupulous a severity, that chamber practice, and even private conveyancing, the most voluntary agency, are prohibited to them under the severest penalties and the most rigid modes of inquisition. They have gone beyond even this; for every barrister, six clerk, attorney, or solicitor, is obliged to take a solemn oath not to employ persons of that persuasion; no, not as hackney clerks, at the miserable salary of 7*s.* a week. No tradesman of that persuasion is capable, by any service or settlement, to obtain his freedom in any town corporate; so that they trade and work in their own native towns as aliens, paying as such quarterage, and other charges and impositions. They are expressly forbidden, in whatever employment, to take more than two apprentices, except in the linen manufacture only.

In every state, next to the care of the life and properties

of the subject, the education of their youth has been a subject of attention. In the Irish laws this point has not been neglected. Those who are acquainted with the constitution of our universities need not be informed, that none but those who conform to the Established Church can be at all admitted to study there; and that none can obtain degrees in them who do not previously take all the tests, oaths, and declarations. Lest they should be enabled to supply this defect by private academies and schools of their own, the law has armed itself with all its terrors against such a practice. Popish schoolmasters of every species are proscribed by those acts, and it is made felony to teach even in a private family: so that Papists are entirely excluded from an education in any of our authorized establishments for learning at home. In order to shut up every avenue to instruction, the act of King William in Ireland has added to this restraint by precluding them from all foreign education. This act is worthy of attention on account of the singularity of some of its provisions. Being sent for education to any Popish school or college abroad, upon conviction, incurs (if the party sent has any estate of inheritance) a kind of unalterable and perpetual outlawry. The tender and incapable age of such a person, his natural subjection to the will of others, his necessary unavoidable ignorance of the laws, stands for nothing in his favour. He is disabled to sue in law or equity; to be guardian, executor, or administrator: he is rendered incapable of any legacy or deed of gift; he forfeits all his goods and chattels for ever, and he forfeits for his life all his lands, hereditaments, offices, and estate of freehold, and all trusts, powers, or interests therein.

All persons concerned in sending them or maintaining them abroad, by the least assistance of money or otherwise, are involved in the same disabilities, and subjected to the same penalties.

The mode of conviction is as extraordinary as the penal sanctions of this act. A justice of peace, upon information that any child is sent away, may require to be brought before him all persons charged, or even suspected, of sending or assisting, and examine them and other persons on oath concerning the fact. If on this examination he finds it *probable* that the party was sent contrary to this act, he is then to

bind over the parties and witnesses in any sum he thinks fit, but not less than £200, to appear and take their trial at the next quarter sessions. Here the justices are to re-examine evidence, until they arrive, as before, to what shall appear to them a probability. For the rest, they resort to the accused; —if they can prove that any person, or any money, or any bill of exchange, has been sent abroad by the party accused, they throw the proof upon him to show for what innocent purposes it was sent; and on failure of such proof he is subjected to all the above-mentioned penalties. Half the forfeiture is given to the Crown; the other half goes to the informer.

It ought here to be remarked, that this mode of conviction not only concludes the party has failed in his expurgatory proof, but it is sufficient also to subject to the penalties and incapacities of the law the infant, upon whose account the person has been so convicted. It must be confessed that the law has not left him without some species of remedy in this case apparently of much hardship, where one man is convicted upon evidence given against another, if he has the good fortune to live; for, within a twelvemonth after his return, or his age of 21, he has a right to call for a new trial, in which he also is to undertake the negative proof, and to show by sufficient evidence that he has not been sent abroad against the intention of the act. If he succeeds in this difficult exculpation, and demonstrates his innocence to the satisfaction of the court, he forfeits all his goods and chattels, and all the profits of his lands incurred and received before such acquittal; but he is freed from all other forfeitures, and from all subsequent incapacities. There is also another method allowed by the law in favour of persons under such unfortunate circumstances, as in the former case for their innocence, in this upon account of their expiation;—if within six months after their return, with the punctilious observation of many ceremonies, they conform to the Established Church, and take all the oaths and subscriptions, the legislature, in consideration of the incapable age in which they were sent abroad, of the merit of their early conformity, and to encourage conversions, only confiscates, as in the former case, the whole personal estate, and the profits of the real; in all other respects, restoring and rehabilitating the party.

So far as to property and education. There remain some other heads, upon which the acts have changed the course of the common law; and first, with regard to the right of self-defence, which consists in the use of arms. This, though one of the rights by the law of nature, yet is so capable of abuse, that it may not be unwise to make some regulations concerning them: and many wise nations have thought proper to set several restrictions on this right, especially temporary ones, with regard to suspected persons, and on occasion of some imminent danger to the public from foreign invasion or domestic commotions.

But provisions in time of trouble, proper and perhaps necessary, may become in time of profound peace a scheme of tyranny. The method which the statute law of Ireland has taken upon this delicate article, is to get rid of all difficulties at once, by an universal prohibition to all persons, at all times, and under all circumstances, who are not Protestants, of using or keeping any kind of weapons whatsoever. In order to enforce this regulation, the whole spirit of the common law is changed; very severe penalties are enjoined; the largest powers are vested in the lowest magistrates. Any two justices of peace, or magistrates of a town, with or without information, at their pleasure, by themselves or their warrant, are empowered to enter and search the house of any Papist, or even of any other person, whom they suspect to keep such arms in trust for them. The only limitation to the extent of this power is, that the search is to be made between the rising and setting of the sun: but even this qualification extends no further than to the execution of the act in the open country; for in all cities and their suburbs, in towns corporate and market towns, they may, at their discretion, and without information, break open houses, and institute such search at any hour of the day or night. This I say they may do at their discretion, and it seems a pretty ample power in the hands of such magistrates. However, the matter does by no means totally rest on their discretion. Besides the discretionary and occasional search, the statute has prescribed one that is general and periodical. It is to be made annually, by the warrant of the justices at their Midsummer quarter sessions, by the high and petty constables, or any others whom they may authorize, and by all

corporate magistrates, in all houses of Papists, and every other, where they suspect arms for the use of such persons to be concealed, with the same powers, in all respects, which attend the occasional search. The whole of this regulation, concerning both the general and particular search, seems to have been made by a legislature which was not at all extravagantly jealous of personal liberty. Not trusting, however, to the activity of the magistrate acting officially, the law has invited all voluntary informers by considerable rewards, and even pressed involuntary informers into this service by the dread of heavy penalties. With regard to the latter method, two justices of peace, or the magistrate of any corporation, are empowered to summon before them any persons whatsoever, to tender them an oath, by which they oblige them to discover all persons who have any arms concealed contrary to law. Their refusal, or declining to appear, or, appearing, their refusal to inform, subjects them to the severest penalties. If peers or peeresses are summoned (for they may be summoned by the bailiff of a corporation of six cottages) to perform this honourable service, and refuse to inform, the first offence is £300 penalty; the second is *premunire*, that is to say, imprisonment for life, and forfeiture of their goods. Persons of an inferior order are, for the first offence, fined £30; for the second, they too are subjected to *premunire*. So far as to involuntary;—now, as to voluntary informers, the law entitles them to half the penalty incurred by carrying or keeping arms; for, on conviction of this offence, the penalty upon persons of whatever substance is the sum of £50 and a year's imprisonment, which cannot be remitted even by the Crown.

The only exception to this law is a licence from the lord-lieutenant and council to carry arms, which by its nature is extremely limited, and I do not suppose there are six persons now in the kingdom who have been fortunate enough to obtain it.

There remains, after this system concerning property and defence, to say something concerning the exercise of religion, which is carried on in all persuasions, but especially in the Romish, by persons appointed for that purpose. The law of King William and Queen Anne ordered all Popish parsons exercising ecclesiastical jurisdiction, all orders of monks and

friars, and all priests, not then actually in parishes, and to be registered, to be banished the kingdom; and if they should return from exile, to be hanged, drawn, and quartered. Twenty pounds reward is given for apprehending them. Penalty on harbouring and concealing.

As all the priests then in being and registered are long since dead, and as these laws are made perpetual, every Popish priest is liable to the law.

The reader has now before him a tolerably complete view of the Popery laws relative to property by descent or acquisition, to education, to defence, and to the free exercise of religion, which may be necessary to enable him to form some judgment of the spirit of the whole system, and of the subsequent reflections that are to be made upon it.

CHAPTER III.

PART I.

THE system which we have just reviewed, and the manner in which religious influence on the public is made to operate upon the laws concerning property in Ireland, is in its nature very singular, and differs, I apprehend, essentially, and perhaps to its disadvantage, from any scheme of religious persecution now existing in any other country in Europe, or which has prevailed in any time, or nation, with which history has made us acquainted. I believe it will not be difficult to show that it is unjust, impolitic, and inefficacious; that it has the most unhappy influence on the prosperity, the morals, and the safety of that country; that this influence is not accidental, but has flowed as the necessary and direct consequence of the laws themselves, first on account of the object which they effect, and next by the quality of the greatest part of the instruments they employ. Upon all these points, first upon the general, and then on the particular, this question will be considered with as much order as can be followed in a matter of itself as involved and intricate as it is important.

The first and most capital consideration with regard to this, as to every object, is the extent of it; and here it is necessary to premise, this system of penalty and incapacity

has for its object no small sect, or obscure party, but a very numerous body of men—a body which comprehends at least two-thirds of that whole nation; it amounts to 2,800,000 souls, a number sufficient for the materials constituent of a great people. Now it is well worthy of a serious and dispassionate examination, whether such a system, respecting such an object, be in reality agreeable to any sound principles of legislation, or any authorized definition of law; for if our reasons or practices differ from the general informed sense of mankind, it is very moderate to say that they are at least suspicious.

This consideration of the magnitude of the object ought to attend us through the whole inquiry; if it does not always affect the reason, it is always decisive on the importance of the question. It not only makes in itself a more leading point, but complicates itself with every other part of the matter, giving every error, minute in itself, a character and significance from its application. It is, therefore, not to be wondered at if we perpetually recur to it in the course of this essay.

In the making of a new law it is undoubtedly the duty of the legislator to see that no injustice be done even to an individual; for there is then nothing to be unsettled, and the matter is under his hands to mould it as he pleases; and if he finds it untractable in the working, he may abandon it without incurring any new inconvenience. But in the question concerning the repeal of an old one, the work is of more difficulty; because laws, like houses, lean on one another, and the operation is delicate, and should be necessary; the objection, in such a case, ought not to arise from the natural infirmity of human institutions, but from substantial faults, which contradict the nature and end of law itself; faults not arising from the imperfection, but from the misapplication and abuse, of our reason. As no legislators can regard the *minima* of equity, a law may in some instances be a just subject of censure, without being at all an object of repeal. But if its transgressions against common right and the ends of just government should be considerable in their nature, and spreading in their effects, as this objection goes to the root and principle of the law, it renders it void in its obligatory quality on the mind, and therefore determines it as the pro-

per object of abrogation and repeal, so far as regards its civil existence. The objection here is, as we observed, by no means on account of the imperfection of the law; it is on account of its erroneous principle; for, if this be fundamentally wrong, the more perfect the law is made the worse it becomes. It cannot be said to have the properties of genuine law, even in its imperfections and defects. The true weakness and opprobrium of our best general constitutions is, that they cannot provide beneficially for every particular case, and thus fill, adequately to their intentions, the circle of universal justice. But where the principle is faulty, the erroneous part of the law is the beneficial, and justice only finds refuge in those holes and corners which had escaped the sagacity and inquisition of the legislator. The happiness or misery of multitudes can never be a thing indifferent. A law against the majority of the people is in substance a law against the people itself; its extent determines its invalidity; it even changes its character as it enlarges its operation: it is not particular injustice, but general oppression; and can no longer be considered as a private hardship, which might be borne, but spreads and grows up into the unfortunate importance of a national calamity.

Now, as a law directed against the mass of the nation has not the nature of a reasonable institution, so neither has it the authority: for in all forms of government the people is the true legislator; and whether the immediate and instrumental cause of the law be a single person or many, the remote and efficient cause is the consent of the people, either actual or implied; and such consent is absolutely essential to its validity. To the solid establishment of every law two things are essentially requisite: first, a proper and sufficient human power to declare and modify the matter of the law; and next, such a fit and equitable constitution as they have a right to declare and render binding. With regard to the first requisite, the human authority, it is their judgment they give up, not their right. The people, indeed, are presumed to consent to whatever the legislature ordains for their benefit; and they are to acquiesce in it, though they do not clearly see into the propriety of the means by which they are conducted to that desirable end. This they owe as an act of homage and just deference to a reason which the necessity

of government has made superior to their own. But though the means, and indeed the nature, of a public advantage may not always be evident to the understanding of the subject, no one is so gross and stupid as not to distinguish between a benefit and an injury. No one can imagine, then, an exclusion of a great body of men, not from favours, privileges, and trusts, but from the common advantages of society, can ever be a thing intended for their good, or can ever be ratified by any implied consent of theirs. If, therefore, at least an implied human consent is necessary to the existence of a law, such a constitution cannot in propriety be a law at all.

But if we could suppose that such a ratification was made, not virtually but actually, by the people, not representatively, but even collectively, still it would be null and void. They have no right to make a law prejudicial to the whole community, even though the delinquents in making such an act should be themselves the chief sufferers by it; because it would be made against the principle of a superior law, which it is not in the power of any community, or of the whole race of man, to alter.—I mean the will of Him who gave us our nature, and in giving impressed an invariable law upon it. It would be hard to point out any error more truly subversive of all the order and beauty, of all the peace and happiness, of human society, than the position that any body of men have a right to make what laws they please; or that laws can derive any authority from their institution merely and independent of the quality of the subject-matter. No arguments of policy, reason of state, or preservation of the constitution, can be pleaded in favour of such a practice. They may, indeed, impeach the frame of that constitution; but can never touch this immovable principle. This seems to be, indeed, the principle which Hobbes broached in the last century, and which was then so frequently and so ably refuted. Cicero exclaims with the utmost indignation and contempt against such a notion;[1] he considers it not only as unworthy

[1] Cicero de Legibus, lib. prim. 15 et 16. O rem dignam, in quâ non modo docti, verum etiam agrestes, erubescant! Jam vero illud stultissimum existimare omnia justa esse, quæ scita sunt in populorum institutis aut legibus, &c. Quod si populorum jussis, si principum decretis, si sententiis judicum jura constituerentur, jus esset latrocinari, jus adulterare, jus testamenta falsa supponere, si hæc suffragiis aut scitis multitudinis probarentur.

of a philosopher, but of an illiterate peasant; that of all things this was the most truly absurd, to fancy that the rule of justice was to be taken from the constitutions of commonwealths, or that laws derived their authority from the statutes of the people, the edicts of princes, or the decrees of judges. If it be admitted that it is not the black letter and the king's arms that makes the law, we are to look for it elsewhere.

In reality there are two, and only two, foundations of law; and they are both of them conditions without which nothing can give it any force; I mean equity and utility. With respect to the former, it grows out of the great rule of equality, which is grounded upon our common nature, and which Philo, with propriety and beauty, calls the Mother of Justice. All human laws are, properly speaking, only declaratory; they may alter the mode and application, but have no power over the substance of original justice. The other foundation of law, which is utility, must be understood, not of partial or limited, but of general and public, utility, connected in the same manner with, and derived directly from, our rational nature; for any other utility may be the utility of a robber, but cannot be that of a citizen; the interest of the domestic enemy, and not that of a member of the commonwealth. This present equality can never be the foundation of statutes, which create an artificial difference between men, as the laws before us do, in order to induce a consequential inequality in the distribution of justice. Law is a mode of human action respecting society, and must be governed by the same rules of equity which govern every private action; and so Tully considers it, in his Offices, as the only utility agreeable to that nature; ***unum debet esse omnibus propositum, ut eadem sit utilitas uniuscujusque et universorum; quam si ad se quisque rapiat, dissolvetur omnis humana consortio.***

If any proposition can be clear in itself, it is this; that a law, which shuts out from all secure and valuable property the bulk of the people, cannot be made for the utility of the party so excluded. This, therefore, is not the utility which Tully mentions. But if it were true (as it is not) that the real interest of any part of the community could be separated from the happiness of the rest, still it would afford no just foundation for a statute providing exclusively for that interest at the expense of the other; because it would be repugnant

to the essence of law, which requires that it be made as much as possible for the benefit of the whole. If this principle be denied or evaded, what ground have we left to reason on? We must at once make a total change in all our ideas, and look for a new definition of law. Where to find it I confess myself at a loss. If we resort to the fountains of jurisprudence, they will not supply us with any, that is for our purpose. *Jus* (says Paulus) *pluribus modis dicitur; uno modo, cum id, quod semper æquum et bonum est, jus dicitur, ut est jus naturale;* this sense of the word will not be thought, I imagine, very applicable to our penal laws. *Altero modo, quod omnibus aut pluribus in unâquâque civitate utile est, ut est jus civile.* Perhaps this latter will be as insufficient, and would rather seem a censure and condemnation of the Popery Acts than a definition that includes them; and there is no other to be found in the whole digest; neither are there any modern writers whose ideas of law are at all narrower.

It would be far more easy to heap up authorities on this article, than to excuse the prolixity and tediousness of producing any at all in proof of a point, which, though too often practically denied, is in its theory almost self-evident. For Suarez, handling this very question, *utrum de ratione et substantiâ legis esse ut propter commune bonum feratur,* does not hesitate a moment, finding no ground in reason or authority to render the affirmative in the least decree disputable: *In quæstione ergo propositâ* (says he) *nulla est inter authores controversia; sed omnium commune est axioma de substantiâ et ratione legis esse, ut pro communi bono feratur; ita ut propter illud præcipuè tradatur;* having observed, in another place, *contra omnem rectitudinem est bonum commune ad privatum ordinare, seu totum ad partem propter ipsum referre.* Partiality and law are contradictory terms. Neither the merits nor the ill deserts, neither the wealth and importance nor the indigence and obscurity, of the one part or of the other, can make any alteration in this fundamental truth. On any other scheme I defy any man living to settle a correct standard, which may discriminate between equitable rule and the most direct tyranny. For if we can once prevail upon ourselves to depart from the strictness and integrity of this principle in favour even of a considerable party, the

argument will hold for one that is less so; and thus we shall go on, narrowing the bottom of public right, until step by step we arrive, though after no very long or very forced deduction, at what one of our poets calls the *enormous faith*; the faith of the many, created for the advantage of a single person. I cannot see a glimmering of distinction to evade it; nor is it possible to allege any reason for the proscription of so large a part of the kingdom, which would not hold equally to support, under parallel circumstances, the proscription of the whole.

I am sensible that these principles, in their abstract light, will not be very strenuously opposed. Reason is never inconvenient but when it comes to be applied. Mere general truths interfere very little with the passions. They can, until they are roused by a troublesome application, rest in great tranquillity side by side with tempers and proceedings the most directly opposite to them. Men want to be reminded, who do not want to be taught; because those original ideas of rectitude, to which the mind is compelled to assent when they are proposed, are not always as present to it as they ought to be. When people are gone, if not into a denial, at least into a sort of oblivion of those ideas; when they know them only as barren speculations, and not as practical motives for conduct,—it will be proper to press as well as to offer them to the understanding; and when one is attacked by prejudices, which aim to intrude themselves into the place of law, what is left for us but to vouch and call to warranty those principles of original justice from whence alone our title to everything valuable in society is derived? Can it be thought to arise from a superfluous, vain parade of displaying general and uncontroverted maxims, that we should revert at this time to the first principles of law, when we have directly under our consideration a whole body of statutes, which, I say, are so many contradictions, which their advocates allow to be so many exceptions from those very principles? Take them in the most favourable light, every exception from the original and fixed rule of equality and justice ought surely to be very well authorized in the reason of their deviation, and very rare in their use. For if they should grow to be frequent, in what would they differ from an abrogation of the rule itself? By becoming thus frequent,

they might even go further; and, establishing themselves into a principle, convert the rule into the exception. It cannot be dissembled, that this is not at all remote from the case before us, where the great body of the people are excluded from all valuable property; where the greatest and most ordinary benefits of society are conferred as privileges, and not enjoyed on the footing of common rights.

The clandestine manner in which those in power carry on such designs is a sufficient argument of the sense they inwardly entertain of the true nature of their proceedings. Seldom is the title or preamble of the law of the same import with the body and enacting part; but they generally place some other colour uppermost, which differs from that which is afterwards to appear, or at least one that is several shades fainter. Thus the penal laws in question are not called laws to oblige men, baptized and educated in Popery, to renounce their religion or their property; but are called laws to prevent the growth of Popery; as if their purpose was only to prevent conversions to that sect, and not to persecute a million of people already engaged in it. But of all the instances of this sort of legislative artifice, and of the principles that produced it, I never met with any which made a stronger impression on me than that of Louis XIV., in the revocation of the Edict of Nantz. That monarch had, when he made that revocation, as few measures to keep with public opinion as any man. In the exercise of the most unresisted authority at home, in a career of uninterrupted victory abroad, and in a course of flattery equal to the circumstances of his greatness in both these particulars, he might be supposed to have as little need as disposition to render any sort of account to the world of his procedure towards his subjects. But the persecution of so vast a body of men as the Huguenots was too strong a measure even for the law of pride and power. It was too glaring a contradiction even to those principles upon which persecution itself is supported. Shocked at the naked attempt, he had recourse, for a palliation of his conduct, to an unkingly denial of the fact, which made against him. In the preamble, therefore, to his act of revocation, he sets forth that the Edict of Nantz was no longer necessary, as the object of it (the Protestants of his kingdom) were then reduced to a very small number. The refugees in

Holland cried out against this misrepresentation. They asserted, I believe with truth, that this revocation had driven 200,000 of them out of their country; and that they could readily demonstrate there still remained 600,000 Protestants in France. If this were the fact, (as it was undoubtedly,) no argument of policy could have been strong enough to excuse a measure by which 800,000 men were despoiled, at one stroke, of so many of their rights and privileges. Louis XIV. confessed, by this sort of apology, that if the number had been large the revocation had been unjust. But, after all, is it not most evident, that this act of injustice, which let loose on that monarch such a torrent of invective and reproach, and which threw so dark a cloud over all the splendour of a most illustrious reign, falls far short of the case in Ireland? The privileges which the Protestants of that kingdom enjoyed antecedent to this revocation were far greater than the Roman Catholics of Ireland ever aspired to under a contrary establishment. The number of their sufferers, if considered absolutely, is not half of ours; if considered relatively to the body of each community, it is not perhaps a twentieth part. And then the penalties and incapacities which grew from that revocation are not so grievous in their nature, nor so certain in their execution, nor so ruinous by a great deal to the civil prosperity of the state, as those which we have established for a perpetual law in our unhappy country. It cannot be thought to arise from affectation that I call it so. What other name can be given to a country which contains so many hundred thousands of human creatures reduced to a state of the most abject servitude?

In putting this parallel, I take it for granted that we can stand for this short time very clear of our party distinctions. If it were enough, by the use of an odious and unpopular word, to determine the question, it would be no longer a subject of rational disquisition; since that very prejudice which gives these odious names, and which is the party charged for doing so, and for the consequences of it, would then become the judge also. But I flatter myself that not a few will be found who do not think that the names of Protestant and Papist can make any change in the nature of essential justice. Such men will not allow that to be proper

treatment to the one of these denominations which would be cruelty to the other; and which converts its very crime into the instrument of its defence: they will hardly persuade themselves that what was bad policy in France can be good in Ireland; or that what was intolerable injustice in an arbitrary monarch becomes, only by being more extended and more violent, an equitable procedure in a country professing to be governed by law. It is however impossible not to observe with some concern that there are many also of a different disposition; a number of persons whose minds are so formed, that they find the communion of religion to be a close and an endearing tie, and their country to be no bond at all; to whom common altars are a better relation than common habitations and a common civil interest; whose hearts are touched with the distresses of foreigners, and are abundantly awake to all the tenderness of human feeling on such an occasion, even at the moment that they are inflicting the very same distresses, or worse, on their fellow-citizens, without the least sting of compassion or remorse. To commiserate the distresses of all men suffering innocently, perhaps meritoriously, is generous, and very agreeable to the better part of our nature—a disposition that ought by all means to be cherished. But to transfer humanity from its natural basis, our legitimate and homebred connexions; to lose all feeling for those who have grown up by our sides, in our eyes, of the benefit of whose cares and labours we have partaken from our birth, and meretriciously to hunt abroad after foreign affections, is such a disarrangement of the whole system of our duties, that I do not know whether benevolence so displaced is not almost the same thing as destroyed, or what effect bigotry could have produced that is more fatal to society. This no one could help observing, who has seen our doors kindly and bountifully thrown open to foreign sufferers for conscience, whilst through the same ports were issuing fugitives of our own, driven from their country for a cause which to an indifferent person would seem to be exactly similar, whilst we stood by, without any sense of the impropriety of this extraordinary scene, accusing, and practising injustice. For my part, there is no circumstance, in all the contradictions of our most mysterious nature, that appears to be more humiliating than the use we are disposed to make of

those sad examples which seem purposely marked for our correction and improvement. Every instance of fury and bigotry in other men, one should think, would naturally fill us with a horror of that disposition. The effect, however, is directly contrary. We are inspired, it is true, with a very sufficient hatred for the party, but with no detestation at all of the proceeding. Nay, we are apt to urge our dislike of such measures as a reason for imitating them; and, by an almost incredible absurdity, because some powers have destroyed their country by their persecuting spirit, to argue, that we ought to retaliate on them by destroying our own. Such are the effects, and such I fear has been the intention, of those numberless books which are daily printed and industriously spread, of the persecutions in other countries and other religious persuasions. These observations, which are a digression, but hardly, I think, can be considered as a departure from the subject, have detained us some time; we will now come more directly to our purpose.

It has been shown, I hope with sufficient evidence, that a constitution against the interests of the many is rather of the nature of a grievance than of a law; that of all grievances it is the most weighty and important; that it is made without due authority, against all the acknowledged principles of jurisprudence, against the opinions of all the great lights in that science; and that such is the tacit sense even of those who act in the most contrary manner. These points are indeed so evident, that I apprehend the abettors of the penal system will ground their defence on an admission, and not on a denial, of them. They will lay it down as a principle, that the Protestant religion is a thing beneficial for the whole community, as well in its civil interests as in those of a superior order. From thence they will argue, that, the end being essentially beneficial, the means become instrumentally so; that these penalties and incapacities are not final causes of the law, but only a discipline to bring over a deluded people to their real interest; and therefore, though they may be harsh in their operation, they will be pleasant in their effects; and, be they what they will, they cannot be considered as a very extraordinary hardship, as it is in the power of the sufferer to free himself when he pleases; and that only by converting to a better religion, which it is his duty to embrace, even though it were

attended with all those penalties from whence in reality it delivers him: if he suffers, it is his own fault; *volenti non fit injuria.*

I shall be very short, without being, I think, the less satisfactory, in my answer to these topics, because they never can be urged from a conviction of their validity; and are, indeed, only the usual and impotent struggles of those who are unwilling to abandon a practice which they are unable to defend. First then I observe, that if the principle of their final and beneficial intention be admitted as a just ground for such proceedings, there never was, in the blamable sense of the word, nor ever can be, such a thing as a religious persecution in the world. Such an intention is pretended by all men, who all not only insist that their religion has the sanction of Heaven, but is likewise, and for that reason, the best and most convenient to human society. All religious persecution, Mr. Bayle well observes, is grounded upon a miserable *petitio principii.* You are wrong, I am right; you must come over to me, or you must suffer. Let me add, that the great inlet by which a colour for oppression has entered into the world, is by one man's pretending to determine concerning the happiness of another, and by claiming a right to use what means he thinks proper in order to bring him to a sense of it. It is the ordinary and trite sophism of oppression. But there is not yet such a convenient ductility in the human understanding, as to make us capable of being persuaded, that men can possibly mean the ultimate good of the whole society by rendering miserable for a century together the greater part of it; or that any one has such a reversionary benevolence as seriously to intend the remote good of a late posterity, who can give up the present enjoyment which every honest man must have in the happiness of his contemporaries. Everybody is satisfied, that a conservation and secure enjoyment of our natural rights is the great and ultimate purpose of civil society; and that therefore all forms whatsoever of government are only good as they are subservient to that purpose to which they are entirely subordinate. Now, to aim at the establishment of any form of government by sacrificing what is the substance of it; to take away, or at least to suspend, the rights of nature, in order to an approved system for the protection of them; and, for the sake of that about

which men must dispute for ever, to postpone those things about which they have no controversy at all, and this not in minute and subordinate, but large and principal, objects, is a procedure as preposterous and absurd in argument as it is oppressive and cruel in its effect. For the Protestant religion, nor (I speak it with reverence, I am sure,) the truth of our common Christianity, is not so clear as this proposition; that all men, at least the majority of men in the society, ought to enjoy the common advantages of it. You fall, therefore, into a double error; first, you incur a certain mischief for an advantage which is comparatively problematical, even though you were sure of obtaining it; secondly, whatever the proposed advantage may be, were it of a certain nature, the attainment of it is by no means certain; and such deep gaming for stakes so valuable ought not to be admitted: the risk is of too much consequence to society. If no other country furnished examples of this risk, yet our laws and our country are enough fully to demonstrate the fact; Ireland, after almost a century of persecution, is at this hour full of penalties and full of Papists. This is a point which would lead us a great way; but it is only just touched here, having much to say upon it in its proper place. So that you have incurred a certain and an immediate inconvenience for a remote and for a doubly uncertain benefit. Thus far as to the argument which would sanctify the injustice of these laws by the benefits which are proposed to arise from them, and as to that liberty which by a new political chemistry was to be extracted out of a system of oppression.

Now as to the other point, that the objects of these laws suffer voluntarily: this seems to me to be an insult rather than an argument. For, besides that it totally annihilates every characteristic, and therefore every faulty, idea of persecution, just as the former does; it supposes, what is false in fact, that it is in a man's moral power to change his religion whenever his convenience requires it. If he be beforehand satisfied that your opinion is better than his, he will voluntarily come over to you, and without compulsion; and then your law would be unnecessary; but if he is not so convinced, he must know that it is his duty in this point to sacrifice his interest here to his opinion of his eternal happiness, else he could have in reality no religion at all. In the

former case, therefore, as your law would be unnecessary; in the latter, it would be persecuting; that is, it would put your penalty and his ideas of duty in the opposite scales; which is, or I know not what is, the precise idea of persecution. If then you require a renunciation of his conscience, as a preliminary to his admission to the rights of society, you annex, morally speaking, an impossible condition to it. In this case, in the language of reason and jurisprudence, the condition would be void, and the gift absolute; as the practice runs, it is to establish the condition, and to withhold the benefit. The suffering is, then, not voluntary. And I never heard any other argument, drawn from the nature of laws and the good of human society, urged in favour of those prospective statutes, except those which have just been mentioned.

CHAPTER III.

PART II.

The second head upon which I propose to consider those statutes, with regard to their object, and which is the next in importance to the magnitude, and of almost equal concern in the inquiry into the justice of these laws, is its possession. It is proper to recollect that this religion, which is so persecuted in its members, is the old religion of the country, and the once established religion of the state; the very same, which had for centuries received the countenance and sanction of the laws, and from which it would at one time have been highly penal to have dissented. In proportion as mankind has become enlightened, the idea of religious persecution, under any circumstances, has been almost universally exploded by all good and thinking men. The only faint shadow of difficulty which remains, is concerning the introduction of new opinions. Experience has shown that, if it has been favourable to the cause of truth, it has not been always conducive to the peace of society. Though a new religious sect should even be totally free in itself from any tumultuous and disorderly zeal, which, however, is rarely the case, it has a tendency to create a resistance from the establishment in possession, productive of great disorders; and

thus becomes, innocently indeed, but yet very certainly, the cause of the bitterest dissensions in the commonwealth. To a mind not thoroughly saturated with the tolerating maxims of the gospel, a preventive persecution, on such principles, might come recommended by strong, and apparently no immoral, motives of policy, whilst yet the contagion was recent, and had laid hold but on a few persons. The truth is, these politics are rotten and hollow at bottom, as all that are founded upon any, however minute, a degree of positive injustice must ever be. But they are specious, and sufficiently so to delude a man of sense and of integrity. But it is quite otherwise with the attempt to eradicate by violence a wide-spreading and established religious opinion. If the people are in an error, to inform them is not only fair but charitable; to drive them is a strain of the most manifest injustice. If not the right, the presumption at least is ever on the side of possession. Are they mistaken? if it does not fully justify them, it is a great alleviation of guilt, which may be mingled with their misfortune, that the error is none of their forging; that they received it on as good a footing as they can receive your laws and your legislative authority, because it was handed down to them from their ancestors. The opinion may be erroneous, but the principle is undoubtedly right; and you punish them for acting upon a principle which of all others is perhaps the most necessary for preserving society, an implicit admiration and adherence to the establishments of their forefathers.

If indeed the legislative authority was on all hands admitted to be the ground of religious persuasion, I should readily allow that dissent would be rebellion. In this case it would make no difference, whether the opinion was sucked in with the milk, or imbibed yesterday: because the same legislative authority which had settled, could destroy it with all the power of a Creator over his creature. But this doctrine is universally disowned, and for a very plain reason. Religion, to have any force on men's understandings, indeed to exist at all, must be supposed paramount to laws, and independent for its substance upon any human institution. Else it would be the absurdest thing in the world; an acknowledged cheat. Religion, therefore, is not believed because the laws have established it; but it is established because the leading part

of the community have previously believed it to be true. As no water can rise higher than its spring, no establishment can have more authority than it derives from its principle; and the power of the government can with no appearance of reason go further coercively than to bind and hold down those who have once consented to their opinions. The consent is the origin of the whole. If they attempt to proceed further, they disown the foundation upon which their own establishment was built, and they claim a religious assent upon mere human authority; which has been just now shown to be absurd and preposterous, and which they in fact confess to be so.

However, we are warranted to go thus far. The people often actually do (and perhaps they cannot in general do better) take their religion, not on the coercive, which is impossible, but on the influencing authority of their governors, as wise and informed men. But if they once take a religion on the word of the state, they cannot in common sense do so a second time, unless they have some concurrent reason for it. The prejudice in favour of your wisdom is shook by your change. You confess that you have been wrong; and yet you would pretend to dictate by your sole authority; whereas you disengage the mind by embarrassing it. For why should I prefer your opinion of to-day to your persuasion of yesterday? If we must resort to prepossessions for the ground of opinion, it is in the nature of man rather to defer to the wisdom of times past, whose weakness is not before his eyes, than to the present, of whose imbecility he has daily experience. Veneration of antiquity is congenial to the human mind. When, therefore, an establishment would persecute an opinion in possession, it sets against it all the powerful prejudices of human nature. It even sets its own authority, when it is of most weight, against itself in that very circumstance in which it must necessarily have the least; and it opposes the stable prejudice of time against a new opinion founded on mutability; a consideration that must render compulsion in such a case the more grievous, as there is no security that, when the mind is settled in the new opinion, it may not be obliged to give place to one that is still newer, or even to a return of the old. But when an ancient establishment begins early to persecute an innovation,

it stands upon quite other grounds, and it has all the prejudices and presumptions on its side. It puts its own authority, not only of compulsion, but prepossession, the veneration of past age, as well as the activity of the present time, against the opinion only of a private man, or set of men. If there be no reason, there is at least some consistency, in its proceedings. Commanding to constancy, it does nothing but that of which it sets an example itself. But an opinion at once new and persecuting is a monster; because, in the very instant in which it takes a liberty of change, it does not leave to you even a liberty of perseverance.

Is then no improvement to be brought into society? Undoubtedly; but not by compulsion,—but by encouragement,—but by countenance,—favour,—privileges, which are powerful, and are lawful instruments. The coercive authority of the state is limited to what is necessary for its existence. To this belongs the whole order of criminal law. It considers as crimes (that is, the object of punishment) trespasses against those rules for which society was instituted. The law punishes delinquents, not because they are not good men, but because they are intolerably wicked. It does bear, and must, with the vices and the follies of men, until they actually strike at the root of order. This it does in things actually moral. In all matters of speculative improvement the case is stronger, even where the matter is properly of human cognizance. But to consider an averseness to improvement, the not arriving at perfection, as a crime, is against all tolerably correct jurisprudence; for if the resistance to improvement should be great, and any way general, they would in effect give up the necessary and substantial part in favour of the perfection and the finishing.

But, say the abettors of our penal laws, this old possessed superstition is such in its principles, that society, on its general principles, cannot subsist along with it. Could a man think such an objection possible, if he had not actually heard it made? an objection contradicted, not by hypothetical reasonings, but the clear evidence of the most decisive facts. Society not only exists, but flourishes at this hour, with this superstition, in many countries, under every form of government; in some established; in some tolerated; in others upon an equal footing. And was there no civil society

at all in these kingdoms before the Reformation? To say it was not as well constituted as it ought to be, is saying nothing at all to the purpose; for that assertion evidently regards improvement, not existence. It certainly did then exist; and it as certainly then was at least as much to the advantage of a very great part of society as what we have brought in the place of it; which is indeed a great blessing to those who have profited of the change; but to all the rest, as we have wrought, that is, by blending general persecution with partial reformation, it is the very reverse. We found the people heretics and idolaters; we have, by way of improving their condition, rendered them slaves and beggars; they remain in all the misfortune of their old errors, and all the superadded misery of their recent punishment. They were happy enough, in their opinion at least, before the change: what benefits society then had, they partook of them all. They are now excluded from those benefits; and so far as civil society comprehends them, and as we have managed the matter, our persecutions are so far from being necessary to its existence, that our very reformation is made in a degree noxious. If this be improvement, truly I know not what can be called a depravation of society.

But as those who argue in this manner are perpetually shifting the question, having begun with objecting, in order to give a fair and public colour to their scheme, to a toleration of those opinions as subversive of society in general, they will surely end by abandoning the broad part of the argument, and attempting to show, that a toleration of them is inconsistent with the established government among us. Now, though this position be in reality as untenable as the other, it is not altogether such an absurdity on the face of it. All I shall here observe is, that those who lay it down little consider what a wound they are giving to that establishment for which they pretend so much zeal. However, as this is a consideration not of general justice but of particular and national policy, and as I have reserved a place expressly where it will undergo a thorough discussion, I shall not here embarrass myself with it; being resolved to preserve all the order in my power in the examination of this important, melancholy subject.

However, before we pass from this point concerning pos-

session, it will be a relaxation of the mind, not wholly foreign to our purpose, to take a short review of the extraordinary policy which has been held with regard to religion in that kingdom, from the time our ancestors took possession of it. The most able antiquaries are of opinion, and Archbishop Usher, whom I reckon amongst the first of them, has I think shown, that a religion not very remote from the present Protestant persuasion was that of the Irish before the union of that kingdom to the Crown of England. If this was not directly the fact, this at least seems very probable, that papal authority was much lower in Ireland than in other countries. This union was made under the authority of an arbitrary grant of Pope Adrian, in order that the church of Ireland should be reduced to the same servitude with those that were nearer to his see. It is not very wonderful that an ambitious monarch should make use of any pretence in his way to so considerable an object. What is extraordinary is, that for a very long time, even quite down to the Reformation, and in their most solemn acts, the kings of England founded their title wholly on this grant; they called for obedience from the people of Ireland, not on principles of subjection, but as vassals and mesne lords between them and the popes; and they omitted no measure of force or policy to establish that papal authority and all the distinguishing articles of religion connected with it, and to make it take deep root in the minds of the people. Not to crowd instances unnecessary, I shall select two; one of which is in print, the other on record; the one a treaty, the other an act of parliament. The first is the submission of the Irish chiefs to Richard II. mentioned by Sir John Davis. In this pact they bind themselves for the future to preserve peace and allegiance to the kings of England, under certain pecuniary penalties. But what is remarkable, these fines were all covenanted to be paid into the apostolical chamber, supposing the pope as the superior power, whose peace was broken and whose majesty was violated in disobeying his governor. By this time, so far as regarded England, the kings had extremely abridged the papal power in many material particulars, they had passed the statute of provisors; the statute of premunire; and indeed struck out of the papal authority all things, at least, that seemed to in-

fringe on their temporal independence. In Ireland, however, their proceeding was directly the reverse: there they thought it expedient to exalt it at least as high as ever. For, so late as the reign of Edward IV. the following short but very explicit act of parliament was passed:

IV. Ed. Cap. 3.

An Act, whereby letters patent of pardon from the King to those that sue to Rome for certain benefices is void. Rot. Parl.

Item, At the request of the Commons it is ordeyned and established, by authority of the said Parliament, that all maner letters patents of the King, of pardons or pardon granted by the King, or hereafter to be granted to any provisor, that claim any title by the Bulls of the Pope to any maner benefices, where at the time of the impetrating of the said Bulls of provision, the benefice is full of an incumbent, that then the said letters patents of pardon or pardons be void in law and of none effect.

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When by every expedient of force and policy, by a war of some centuries, by extirpating a number of the old, and by bringing in a number of new, people, full of those opinions, and intending to propagate them, they had fully compassed their object, they suddenly took another turn; commenced an opposite persecution, made heavy laws, carried on mighty wars, inflicted and suffered the worst evils, extirpated the mass of the old, brought in new inhabitants; and they continue at this day an oppressive system, and may for four hundred years to come, to eradicate opinions which by the same violent means they had been four hundred years endeavouring by every means to establish. They compelled the people to submit, by the forfeiture of all their civil rights, to the pope's authority, in its most extravagant and unbounded sense, as a giver of kingdoms; and now they refuse even to tolerate them in the most moderate and chastised sentiments concerning it. No country, I believe, since the world began, has suffered so much on account of religion; or has been so variously harassed both for Popery and for Protestantism.

It will now be seen, that, even if these laws could be supposed agreeable to those of nature in these particulars, on another and almost as strong a principle they are yet unjust, as being contrary to positive compact, and the public faith most solemnly plighted. On the surrender of Limerick, and some other Irish garrisons, in the war of the revolution, the lords justices of Ireland, and the commander-in-chief of the king's forces, signed a capitulation with the Irish, which was afterwards ratified by the king himself, by *inspeximus* under the great seal of England. It contains some public articles relative to the whole body of the Roman Catholics in that kingdom, and some with regard to the security of the greater part of the inhabitants of five counties. What the latter were, or in what manner they were observed, is at this day of much less public concern. The former are two, the 1st and the 9th. The first is of this tenor: the Roman Catholics of this kingdom (Ireland) shall enjoy such privileges, in the exercise of their religion, as are consistent with the laws of Ireland, or as they did enjoy in the reign of King Charles II.: and their Majesties, as soon as their affairs will permit them to summon a parliament in this kingdom, will endeavour to procure the said Roman Catholics such further security in that particular as may preserve them from any disturbance on account of their religion. The 9th article is to this effect: the oath to be administered to such Roman Catholics as submit to their Majesties' government, shall be the oath aforesaid, and no other; viz. the oath of allegiance, made by act of parliament in England, in the first year of their then Majesties; as required by the second of the articles of Limerick. Compare this latter article with the penal laws, as they are stated in the 2nd chapter, and judge whether they seem to be the public acts of the same powers, and observe whether other oaths are tendered to them, and under what penalties. Compare the former with the same laws, from the beginning to the end; and judge whether the Roman Catholics have been preserved, agreeably to the sense of the article, from any disturbance upon account of their religion; or rather whether on that account there is a single right of nature, or benefit of society, which has not been either totally taken away or considerably impaired.

But it is said that the legislature was not bound by this

article, as it has never been ratified in parliament. I do admit that it never had that sanction, and that the parliament was under no obligation to ratify these articles by an express act of theirs. But still I am at a loss how they came to be the less valid, on the principles of our constitution, by being without that sanction. They certainly bound the king and his successors. The words of the article do this, or they do nothing; and so far as the Crown had a share in passing those acts, the public faith was unquestionably broken. In Ireland such a breach on the part of the Crown was much more unpardonable in administration than it would have been here. They have in Ireland a way of preventing any bill even from approaching the royal presence, in matters of far less importance than the honour and faith of the Crown, and the well-being of a great body of the people. For, besides that they might have opposed the very first suggestion of it in the House of Commons, it could not be framed into a bill without the approbation of the council in Ireland. It could not be returned to them again without the approbation of the king and council here. They might have met it again in its second passage through that House of parliament in which it was originally suggested, as well as in the other. If it had escaped them through all these mazes, it was again to come before the lord-lieutenant, who might have sunk it by a refusal of the royal assent. The constitution of Ireland has interposed all those checks to the passing of any constitutional act, however insignificant in its own nature. But did the administration in that reign avail themselves of any one of those opportunities? They never gave the act of the 11th of Queen Anne the least degree of opposition in any one stage of its progress. What is rather the fact, many of the queen's servants encouraged it, recommended it, were in reality the true authors of its passing in parliament, instead of recommending and using their utmost endeavour to establish a law directly opposite in its tendency, as they were bound to do by the express letter of the very first article of the treaty of Limerick. To say nothing further of the ministry, who in this instance most shamefully betrayed the faith of government, may it not be a matter of some degree of doubt whether the parliament, who do not claim a right of dissolving the force of moral obligation, did not make them-

selves a party in this breach of contract, by presenting a bill to the Crown in direct violation of those articles so solemnly and so recently executed, which by the constitution they had full authority to execute?

It may be further objected, that when the Irish requested the ratification of parliament to those articles they did, in effect, themselves entertain a doubt concerning their validity without such a ratification. To this I answer, that the collateral security was meant to bind the Crown, and to hold it firm to its engagements. They did not, therefore, call it a *perfecting* of the security, but an *additional* security, which it could not have been, if the first had been void; for the parliament could not bind itself more than the Crown had bound itself. And if all had made but *one* security, neither of them could be called *additional* with propriety or common sense. But let us suppose that they did apprehend there might have been something wanting in this security without the sanction of parliament. They were, however, evidently mistaken; and this surplusage of theirs did not weaken the validity of the single contract, upon the known principle of law, *Non solent, quæ abundant, vitiare scripturas.* For nothing is more evident, than that the Crown was bound, and that no act can be made without the royal assent. But the constitution will warrant us in going a great deal further, and in affirming that a treaty executed by the Crown, and contradictory of no preceding law, is full as binding on the whole body of the nation as if it had twenty times received the sanction of parliament; because the very same constitution which has given to the Houses of parliament their definite authority, has also left in the Crown the trust of making peace, as a consequence, and much the best consequence, of the prerogative of making war. If the peace was ill made, my Lord Galway, Coningsby, and Porter, who signed it, were responsible; because they were subject to the community. But its own contracts are not subject to it. It is subject to them; and the compact of the king acting constitutionally was the compact of the nation.

Observe what monstrous consequences would result from a contrary position. A foreign enemy has entered, or a strong domestic one has arisen in the nation. In such events the circumstances may be, and often have been, such, that a

parliament cannot sit. This was precisely the case in that rebellion in Ireland. It will be admitted also that their power may be so great, as to make it very prudent to treat with them, in order to save effusion of blood, perhaps to save the nation. Now, could such a treaty be at all made, if your enemies, or rebels, were fully persuaded that, in these times of confusion, there was no authority in the state which could hold out to them an inviolable pledge for their future security: but that there lurked in the constitution a dormant but irresistible power, who would not think itself bound by the ordinary subsisting and contracting authority, but might rescind its acts and obligations at pleasure? This would be a doctrine made to perpetuate and exasperate war; and, on that principle, it directly impugns the law of nations, which is built upon this principle, that war should be softened as much as possible, and that it should cease as soon as possible, between contending parties and communities. The king has a power to pardon individuals. If the king holds out his faith to a robber, to come in on a promise of pardon, of life and estate, and in all respects of a full indemnity, shall the parliament say that he must, nevertheless, be executed, that his estate must be forfeited, or that he shall be abridged of any of the privileges which he before held as a subject? Nobody will affirm it. In such a case the breach of faith would not only be on the part of the king, who assented to such an act, but on the part of the parliament, who made it. As the king represents the whole contracting capacity of the nation, so far as his prerogative (unlimited, as I said before, by any precedent law) can extend, he acts as the national procurator on all such occasions. What is true of a robber is true of a rebel; and what is true of one robber or rebel is as true, and it is a much more important truth, of one hundred thousand.

To urge this part of the argument further is indeed, I fear, not necessary, for two reasons. First, that it seems tolerably evident in itself; and next, that there is but too much ground to apprehend that the actual ratification of parliament would, in the then temper of parties, have proved but a very slight and trivial security. Of this there is a very strong example in the history of those very articles. For, though the parliament omitted in the reign of King William

to ratify the first and most general of them, they did actually confirm the second and more limited, that which related to the security of the inhabitants of those five counties which were in arms when the treaty was made.

CHAPTER IV.

In the foregoing book we considered these laws in a very simple point of view, and in a very general one; merely as a system of hardship imposed on the body of the community; and from thence, and from some other arguments, inferred the general injustice of such a procedure. In this we shall be obliged to be more minute; and the matter will become more complex as we undertake to demonstrate the mischievous and impolitic consequences which the particular mode of this oppressive system, and the instruments which it employs, operating, as we said, on this extensive object, produce on the national prosperity, quiet, and security.

The stock of materials by which any nation is rendered flourishing and prosperous are, its industry; its knowledge, or skill; its morals; its execution of justice; its courage; and the national union in directing these powers to one point, and making them all centre in the public benefit. Other than these I do not know, and scarcely can conceive any means by which a community may flourish.

If we show that these penal laws of Ireland destroy not one only, but every one of these materials of public prosperity, it will not be difficult to perceive, that Great Britain, whilst they subsist, never can draw from that country all the advantages to which the bounty of nature has entitled it.

To begin with the first great instrument of national happiness and strength, its industry, I must observe, that although these penal laws do indeed inflict many hardships on those who are obnoxious to them, yet their chief, their most extensive, and most certain operation is upon property. Those civil constitutions which promote industry are such as facilitate the acquisition, secure the holding, enable the fixing, and suffer the alienation, of property. Every law which obstructs it in any part of this distribution is, in proportion to the force and extent of the obstruction, a discouragement to industry. For a law against property is a law against

industry, the latter having always the former, and nothing else, for its object. Now, as to the acquisition of landed property, which is the foundation and support of all the other kinds, the laws have disabled three-fourths of the inhabitants of Ireland from acquiring any estate of inheritance for life or years, or any charge whatsoever, on which two-thirds of the improved yearly value are not reserved for 30 years.

This confinement of landed property to one set of hands, and preventing its free circulation through the community, is a most leading article of ill policy; because it is one of the most capital discouragements to all that industry which may be employed on the last improvement of the soil, or is any way conversant about land. A tenure of 30 years is evidently no tenure upon which to build; to plant; to raise enclosures; to change the nature of the ground; to make any new experiment which might improve agriculture; or to do anything more than what may answer the immediate and momentary calls of rent to the landlord, and leave subsistence to the tenant and his family. The desire of acquisition is always a passion of long views. Confine a man to momentary possession, and you at once cut off that laudable avarice which every wise state has cherished as one of the first principles of its greatness. Allow a man but a temporary possession, lay it down as a maxim that he never can have any other, and you immediately and infallibly turn him to temporary enjoyments; and these enjoyments are never the pleasures of labour and free industry, whose quality it is to famish the present hours, and squander all upon prospect and futurity; they are, on the contrary, those of a thoughtless, loitering, and dissipated life. The people must be inevitably disposed to such pernicious habits, merely from the short duration of their tenure which the law has allowed. But it is not enough that industry is checked by the confinement of its views; it is further discouraged by the limitation of its own direct object, profit. This is a regulation extremely worthy of our attention, as it is not a consequential, but a direct discouragement to melioration; as directly as if the law had said in express terms, "Thou shalt not improve."

But we have an additional argument to demonstrate the ill policy of denying the occupiers of land any solid property

in it. Ireland is a country wholly unplanted. The farms have neither dwelling-houses nor good offices; nor are the lands almost anywhere provided with fences and communications; in a word, in a very unimproved state. The land-owner there never takes upon him, as it is usual in this kingdom, to supply all these conveniences, and to set down his tenant in what may be called a completely furnished farm. If the tenant will not do it, it is never done. This circumstance shows how miserably and peculiarly impolitic it has been in Ireland to tie down the body of the tenantry to short and unprofitable tenures. A finished and furnished house will be taken for any term, however short: if the repair lies on the owner, the shorter the better. But no one will take one not only unfurnished, but half built, but upon a term which, on calculation, will answer with profit all his charges. It is on this principle that the Romans established their *emphyteusis*, or fee-farm. For though they extended the ordinary term of their location only to nine years, yet they encouraged a more permanent letting to farm, with the condition of improvement, as well as of annual payment, on the part of the tenant, where the land had lain rough and neglected; and therefore invented this species of ingrafted holding in the latter times, when property came to be worse distributed by falling into a few hands. This denial of landed property to the gross of the people has this further evil effect in preventing the improvement of land; that it prevents any of the property acquired in trade to be re-gorged, as it were, upon the land. They must have observed very little who have not remarked the bold and liberal spirit of improvement, which persons bred to trade have often exerted on their land-purchases; that they usually come to them with a more abundant command of ready money than most landed men possess; and that they have in general a much better idea, by long habits of calculative dealings, of the propriety of expending in order to acquire. Besides, such men often bring their spirit of commerce into their estates with them, and make manufactures take a root, where the mere landed gentry had perhaps no capital, perhaps no inclination, and most frequently not sufficient knowledge, to effect anything of the kind. By these means, what beautiful and useful spots have there not been made about trading and manufacturing towns,

and how has agriculture had reason to bless that happy alliance with commerce; and how miserable must that nation be, whose frame of polity has disjointed the landing and the trading interests!

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The great prop of this whole system is not pretended to be its justice or its utility, but the supposed danger to the state which gave rise to it originally, and which, they apprehend, would return if this system were overturned. Whilst, say they, the Papists of this kingdom were possessed of landed property, and of the influence consequent to such property, their allegiance to the Crown of Great Britain was ever insecure; the public peace was ever liable to be broken; and Protestants never could be a moment secure either of their properties or of their lives. Indulgence only made them arrogant, and power daring; confidence only excited and enabled them to exert their inherent treachery; and the times which they generally selected for their most wicked and desperate rebellions were those in which they enjoyed the greatest ease and the most perfect tranquillity.

Such are the arguments that are used both publicly and privately in every discussion upon this point. They are generally full of passion and of error, and built upon facts which in themselves are most false. It cannot, I confess, be denied, that those miserable performances which go about under the names of Histories of Ireland, do indeed represent those events after this manner; and they would persuade us, contrary to the known order of nature, that indulgence and moderation in governors is the natural incitement in subjects to rebel. But there is an interior History of Ireland, the genuine voice of its records and monuments, which speaks a very different language from these histories, from Temple and from Clarendon; these restore nature to its just rights, and policy to its proper order. For they even now show to those who have been at the pains to examine them, and they may show one day to all the world, that these rebellions were not produced by toleration, but by persecution; that they arose not from just and mild government, but from the most unparalleled oppression. These records will be far from giving the least countenance to a doctrine so repugnant to humanity and good sense, as that the security of any estab-

lishment, civil or religious, can ever depend upon the misery of those who live under it, or that its danger can arise from their quiet and prosperity. God forbid, that the history of this or any country should give such encouragement to the folly or vices of those who govern. If it can be shown that the great rebellions of Ireland have arisen from attempts to reduce the natives to the state to which they are now reduced, it will show that an attempt to continue them in that state will rather be disadvantageous to the public peace than any kind of security to it. These things have, in some measure, begun to appear already; and, as far as regards the argument drawn from former rebellions, it will fall readily to the ground. But, for my part, I think the real danger of every state is, to render its subjects justly discontented; nor is there in politics or science any more effectual secret for their security, than to establish in their people a firm opinion, that no change can be for their advantage. It is true that bigotry and fanaticism may, for a time, draw great multitudes of people from a knowledge of their true and substantial interest. But upon this I have to remark three things; first, that such a temper can never become universal, or last for a long time. The principle of religion is seldom lasting; the majority of men are in no persuasion bigots; they are not willing to sacrifice, on every vain imagination that superstition or enthusiasm holds forth, or that even zeal and piety recommend, the certain possession of their temporal happiness. And if such a spirit has been at any time roused in a society, after it has had its paroxysm it commonly subsides and is quiet, and is even the weaker for the violence of its first exertion; security and ease are its mortal enemies. But, secondly, if anything can tend to revive and keep it up, it is to keep alive the passions of men by ill usage. This is enough to irritate even those who have not a spark of bigotry in their constitution to the most desperate enterprises; it certainly will inflame, darken, and render more dangerous the spirit of bigotry in those who are possessed by it. Lastly, by rooting out any sect, you are never secure against the effects of fanaticism; it may arise on the side of the most favoured opinions; and many are the instances wherein the established religion of a state has grown ferocious, and turned upon its keeper, and has often torn to pieces

the civil establishment that had cherished it, and which it was designed to support; France—England—Holland.

But there may be danger of wishing a change, even where no religious motive can operate; and every enemy to such a state comes as a friend to the subject; and where other countries are under terror, they begin to hope.

This argument *ad verecundiam* has as much force as any such have. But I think it fares but very indifferently with those who make use of it; for they would get but little to be proved abettors of tyranny at the expense of putting me to an inconvenient acknowledgment. For if I were to confess that there are circumstances in which it would be better to establish such a religion * * * * *

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With regard to the pope's interest. This foreign chief of their religion cannot be more formidable to us than to other Protestant countries. To conquer that country for himself, is a wild chimera; to encourage revolt in favour of foreign princes, is an exploded idea in the politics of that court. Perhaps it would be full as dangerous to have the people under the conduct of factious pastors of their own, as under a foreign ecclesiastical court.

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In the second year of the reign of Queen Elizabeth were enacted several limitations in the acquisition, or the retaining, of property, which had, so far as regarded any general principles, hitherto remained untouched under all changes.

These bills met no opposition either in the Irish parliament or in the English council, except from private agents, who were little attended to; and they passed into laws with the highest and most general applauses, as all such things are in the beginning, not as a system of persecution, but as master-pieces of the most subtle and refined politics. And, to say the truth, these laws, at first view, have rather an appearance of a plan of vexatious litigation, and crooked lawchicanery, than of a direct and sanguinary attack upon the rights of private conscience; because they did not affect life, at least with regard to the laity; and making the Catholic opinions rather the subject of civil regulations than of criminal prosecutions, to those who are not lawyers, and read

these laws, they only appear to be a species of jargon. For the execution of criminal law has always a certain appearance of violence. Being exercised directly on the persons of the supposed offenders, and commonly executed in the face of the public, such executions are apt to excite sentiments of pity for the sufferers, and indignation against those who are employed in such cruelties; being seen as single acts of cruelty rather than as ill general principles of government. But the operation of the laws in question being such as common feeling brings home to every man's bosom, they operate in a sort of comparative silence and obscurity; and, though their cruelty is exceedingly great, it is never seen in a single exertion, and always escapes commiseration, being scarce known, except to those who view them in a general, which is always a cold and phlegmatic, light. The first of these laws being made with so general a satisfaction, as the chief governors found that such things were extremely acceptable to the leading people in that country, they were willing enough to gratify them with the ruin of their fellow-citizens; they were not sorry to divert their attention from other inquiries, and to keep them fixed to this, as if this had been the only real object of their national politics; and for many years there was no speech from the throne, which did not, with great appearance of seriousness, recommend the passing of such laws; and scarce a session went over without in effect passing some of them; until they have, by degrees, grown to be the most considerable head in the Irish statute book. At the same time, giving a temporary and occasional mitigation to the severity of some of the harshest of those laws, they appeared, in some sort, the protectors of those whom they were in reality destroying by the establishment of general constitutions against them. At length, however, the policy of this expedient is worn out; the passions of men are cooled; those laws begin to disclose themselves, and to produce effects very different from those which were promised in making them; for crooked counsels are ever unwise; and nothing can be more absurd and dangerous than to tamper with the natural foundations of society in hopes of keeping it up by certain contrivances.

A LETTER TO WILLIAM SMITH, ESQ.[1]

MY DEAR SIR,

Your letter is to myself infinitely obliging: with regard to you, I can find no fault with it, except that of a tone of humility and disqualification, which neither your rank, nor the place you are in, nor the profession you belong to, nor your very extraordinary learning and talents, will in propriety demand, or perhaps admit. These dispositions will be still less proper, if you should feel them in the extent your modesty leads you to express them. You have certainly given by far too strong a proof of self-diffidence by asking the opinion of a man circumstanced as I am on the important subject of your letter. You are far more capable of forming just conceptions upon it than I can be. However, since you are pleased to command me to lay before you my thoughts, as materials upon which your better judgment may operate, I shall obey you; and submit them, with great deference, to your melioration or rejection.

But first permit me to put myself in the right. I owe you an answer to your former letter. It did not desire one; but it deserved it. If not for an answer, it called for an acknowledgment. It was a new favour; and indeed I should be worse than insensible if I did not consider the honours you have heaped upon me with no sparing hand, with becoming gratitude. But your letter arrived to me at a time when the closing of my long and last business in life, a business extremely complex, and full of difficulties and vexations of all sorts, occupied me in a manner which those who have not seen the interior as well as exterior of it cannot easily imagine. I confess, that in the crisis of that rude conflict I neglected many things that well deserved my best attention: none that deserved it better, or have caused me more regret in the neglect, than your letter. The instant that business was over, and the House had passed its judgment on the conduct of the managers, I lost no time to execute what for years I had resolved on: it was to quit my public station,

[1] Then a member of the Irish parliament: now one of the barons of the Court of Exchequer in Ireland.

and to seek that tranquillity in my very advanced age to which, after a very tempestuous life, I thought myself entitled. But God has thought fit (and I unfeignedly acknowledge his justice) to dispose of things otherwise. So heavy a calamity has fallen upon me, as to disable me for business, and to disqualify me for repose. The existence I have I do not know that I can call life. Accordingly I do not meddle with any one measure of government, though, for what reasons I know not, you seem to suppose me deeply in the secret of affairs. I only know, so far as your side of the water is concerned, that your present excellent lord-lieutenant (the best man, in every relation, that I have ever been acquainted with) has perfectly pure intentions with regard to Ireland; and, of course, that he wishes cordially well to those who form the great mass of its inhabitants; and who, as they are well or ill managed, must form an important part of its strength, or weakness. If, with regard to that great object, he has carried over any ready-made system, I assure you it is perfectly unknown to me: I am very much retired from the world, and live in much ignorance. This, I hope, will form my humble apology, if I should err in the notions I entertain of the question which is soon to become the subject of your deliberations. At the same time accept it as an apology for my neglects.

You need make no apology for your attachment to the religious description you belong to. It proves (as in you it is sincere) your attachment to the great points in which the leading divisions are agreed, when the lesser, in which they differ, are so dear to you. I shall never call any religious opinions, which appear important to serious and pious minds, things of no consideration. Nothing is so fatal to religion as indifference, which is, at least, half infidelity. As long as men hold charity and justice to be essential integral parts of religion, there can be little danger from a strong attachment to particular tenets in faith. This, I am perfectly sure, is your case; but I am not equally sure that either zeal for the tenets of faith, or the smallest degree of charity or justice, have much influenced the gentlemen who, under pretexts of zeal, have resisted the enfranchisement of their country. My dear son, who was a person of discernment, as well as clear and acute in his expressions, said in a letter of his,

which I have seen, "that in order to grace their cause, and to draw some respect to their persons, they pretend to be bigots." But here, I take it, we have not much to do with the theological tenets, on the one side of the question or the other. The point itself is practically decided. That religion is owned by the state. Except in a settled maintenance, it is protected. A great deal of the rubbish, which, as a nuisance, long obstructed the way, is removed. One impediment remained longer, as a matter to justify the proscription of the body of our country, after the rest had been abandoned as untenable ground. But the business of the pope (that mixed person of politics and religion) has long ceased to be a bug bear: for some time past he has ceased to be even a colourable pretext. This was well known, when the Catholics of these kingdoms, for our amusement, were obliged on oath to disclaim him in his political capacity; which implied an allowance for them to recognise him in some sort of ecclesiastical superiority. It was a compromise of the old dispute.

For my part, I confess, I wish that we had been less eager in this point. I don't think, indeed, that much mischief will happen from it, if things are otherwise properly managed. Too nice an inquisition ought not to be made into opinions that are dying away of themselves. Had we lived a hundred and fifty years ago, I should have been as earnest and anxious as anybody for this sort of abjuration: but, living at the time in which I live, and obliged to speculate forward instead of backward, I must fairly say, I could well endure the existence of every sort of collateral aid which opinion might, in the now state of things, afford to authority. I must see much more danger than in my life I have seen, or than others will venture seriously to affirm that they see, in the pope aforesaid, (though a foreign power, and with his long tail of et ceteras,) before I should be active in weakening any hold which government might think it prudent to resort to, in the management of that large part of the king's subjects. I do not choose to direct all my precautions to the part where the danger does not press; and to leave myself open and unguarded where I am not only really but visibly attacked.

My whole politics, at present, centre in one point; and to this the merit or demerit of every measure (with me) is referable; that is, what will most promote or depress the

cause of Jacobinism. What is Jacobinism? It is an attempt (hitherto but too successful) to eradicate prejudice out of the minds of men, for the purpose of putting all power and authority into the hands of the persons capable of occasionally enlightening the minds of the people. For this purpose the Jacobins have resolved to destroy the whole frame and fabric of the old societies of the world, and to regenerate them after their fashion. To obtain an army for this purpose, they everywhere engage the poor by holding out to them as a bribe the spoils of the rich. This I take to be a fair description of the principles and leading maxims of the enlightened of our day, who are commonly called Jacobins.

As the grand prejudice, and that which holds all the other prejudices together, the first, last, and middle object of their hostility is religion. With that they are at inexpiable war. They make no distinction of sects. A Christian, as such, is to them an enemy. What, then, is left to a real Christian (Christian as a believer and as a statesman) but to make a league between all the grand divisions of that name; to protect and to cherish them all; and by no means to proscribe in any manner, more or less, any member of our common party? The divisions which formerly prevailed in the Church, with all their overdone zeal, only purified and ventilated our common faith; because there was no common enemy arrayed and embattled to take advantage of their dissensions: but now nothing but inevitable ruin will be the consequence of our quarrels. I think we may dispute, rail, persecute, and provoke the Catholics out of their prejudices; but it is not in ours they will take refuge. If anything is, one more than another, out of the power of man, it is to *create* a prejudice. Somebody has said that a king may make a nobleman, but he cannot make a gentleman.

All the principal religions in Europe stand upon one common bottom. The support that the whole, or the favoured parts, may have in the secret dispensations of Providence, it is impossible to tell; but, humanly speaking, they are all *prescriptive* religions. They have all stood long enough to make prescription, and its chain of legitimate prejudices, their main stay. The people who compose the four grand divisions of Christianity have now their religion as a habit, and upon authority, and not on disputation; as all men, who

have their religion derived from their parents, and the fruits of education, *must* have it; however the one, more than the other, may be able to reconcile his faith to his own reason, or to that of other men. Depend upon it, they must all be supported, or they must all fall in the crash of a common ruin. The Catholics are the far more numerous part of the Christians in your country; and how can Christianity (that is now the point in issue) be supported under the persecution, or even under the discountenance, of the greater number of Christians? It is a great truth, and which in one of the debates I stated as strongly as I could to the House of Commons in the last session, that if the Catholic religion is destroyed by the infidels, it is a most contemptible and absurd idea, that this, or any Protestant church, can survive that event. Therefore my humble and decided opinion is, that all the three religions, prevalent more or less in various parts of these islands, ought all, in subordination to the legal establishments, as they stand in the several countries, to be all countenanced, protected, and cherished; and that in Ireland particularly the Roman Catholic religion should be upheld in high respect and veneration; and should be, in its place, provided with all the means of making it a blessing to the people who profess it; that it ought to be cherished as a good, (though not as the most preferable good, if a choice was now to be made,) and not tolerated as an inevitable evil. If this be my opinion as to the Catholic religion, as a sect, you must see that I must be to the last degree averse to put a man, upon that account, upon a bad footing with relation to the privileges which the fundamental laws of this country give him as a subject. I am the more serious on the positive encouragement to be given to this religion, (always, however, as secondary,) because the serious and earnest belief and practice of it by its professors forms, as things stand, the most effectual barrier, if not the sole barrier, against Jacobinism. The Catholics form the great body of the lower ranks of your community; and no small part of those classes of the middling that come nearest to them. You know that the seduction of that part of mankind from the principles of religion, morality, subordination, and social order, is the great object of the Jacobins. Let them grow lax, sceptical, careless, and indifferent with regard to religion, and so sure as

we have an existence, it is not a zealous Anglican or Scottish church principle, but direct Jacobinism, which will enter into that breach. Two hundred years, dreadfully spent in experiments to force that people to change the form of their religion, have proved fruitless. You have now your choice, for full four-fifths of your people, of the Catholic religion, or Jacobinism. If things appear to you to stand on this alternative, I think you will not be long in making your option.

You have made, as you naturally do, a very able analysis of powers; and have separated, as the things are separable, civil from political powers. You start, too, a question, whether the civil can be secured without some share in the political. For my part, as abstract questions, I should find some difficulty in an attempt to resolve them. But, as applied to the state of Ireland, to the form of our commonwealth, to the parties that divide us, and to the dispositions of the leading men in those parties, I cannot hesitate to lay before you my opinion, that whilst any kind of discouragements and disqualifications remain on the Catholics, a handle will be made by a factious power, utterly to defeat the benefits of any civil rights they may apparently possess. I need not go to very remote times for my examples. It was within the course of about a twelvemonth that, after parliament had been led into a step quite unparalleled in its records, after they had resisted all concession, and even hearing, with an obstinacy equal to anything that could have actuated a party domination in the second or eighth of Queen Anne,—after the strange adventure of the grand juries, and after parliament had listened to the sovereign pleading for the emancipation of his subjects;—it was after all this, that such a grudging and discontent was expressed, as must justly have alarmed, as it did extremely alarm, the whole of the Catholic body: and I remember but one period in my whole life, (I mean the savage period between 1761 and 1767,) in which they have been more harshly or contumeliously treated, than since the last partial enlargement. And thus I am convinced it will be by paroxysms, as long as as any stigma remains on them, and whilst they are considered as no better than half citizens. If they are kept such for any length of time, they will be made whole Jacobins. Against this grand and dreadful evil of our time (I do not love to cheat myself or

others) I do not know any solid security whatsoever. But I am quite certain, that what will come nearest to it is to interest as many as you can in the present order of things, religiously, civilly, politically, by all the ties and principles by which mankind are held. This is like to be effectual policy: I am sure it is honourable policy: and it is better to fail, if fail we must, in the paths of direct and manly, than of low and crooked, wisdom.

As to the capacity of sitting in parliament, after all the capacities for voting, for the army, for the navy, for the professions, for civil offices, it is a dispute *de lanâ caprinâ*, in my poor opinion; at least on the part of those who oppose it. In the first place, this admission to office, and this exclusion from parliament, on the principle of an exclusion from political power, is the very reverse of the principle of the English test act. If I were to form a judgment from experience rather than theory, I should doubt much whether the capacity for, or even the possession of, a seat in parliament, did really convey much of power to be properly called political. I have sat there, with some observation, for nine-and-twenty years, or thereabouts. The power of a member of parliament is uncertain and indirect; and, if power rather than splendour and fame were the object, I should think that any of the principal clerks in office, to say nothing of their superiors, (several of whom are disqualified by law for seats in parliament,) possess far more power than nine-tenths of the members of the House of Commons. I might say this of men who seemed from their fortunes, their weight in their country, and their talents, to be persons of figure there; and persons, too, not in opposition to the prevailing party in government.

But be they what they will, on a fair canvass of the several prevalent parliamentary interests in Ireland, I cannot, out of the three hundred members of whom the Irish parliament is composed, discover that above three, or at the utmost four, Catholics would be returned to the House of Commons. But suppose they should amount to thirty, that is, to a tenth part, (a thing I hold impossible for a long series of years, and never very likely to happen,) what is this to those, who are to balance them in the one House, and the clear and settled majority in the other? For I think it ab-

solutely impossible that, in the course of many years, above four or five peers should be created of that communion. In fact, the exclusion of them seems to me only to mark jealousy and suspicion, and not to provide security in any way. But I return to the old ground. The danger is not there:—these are things not long since done away. The grand controversy is no longer between you and them. Forgive this length. My pen has insensibly run on. You are yourself to blame if you are much fatigued. I congratulate you on the auspicious opening of your session. Surely Great Britain and Ireland ought to join in wreathing a never-fading garland for the head of Grattan. Adieu! my dear Sir—good nights to you!—I never can have any.

Yours always most sincerely,

EDMUND BURKE.

Jan. 29th, 1795. *Twelve at night.*

A SECOND LETTER

TO SIR HERCULES LANGRISHE.

MY DEAR SIR,

If I am not as early as I ought to be in my acknowledgments for your very kind letter, pray do me the justice to attribute my failure to its natural, and but too real, cause,—a want of the most ordinary power of exertion, owing to the impressions made upon an old and infirm constitution by private misfortune and by public calamity. It is true I make occasional efforts to rouse myself to something better, but I soon relapse into that state of languor, which must be the habit of my body and understanding to the end of my short and cheerless existence in this world.

I am sincerely grateful for your kindness in connecting the interest you take in the sentiments of an old friend with the able part you take in the service of your country. It is an instance among many of that happy temper which has always given a character of amenity to your virtues, and a good-natured direction to your talents.

Your speech on the Catholic Question I read with much satisfaction. It is solid; it is convincing; it is eloquent; and it ought, on the spot, to have produced that effect which its reason, and that contained in the other excellent speeches on the same side of the question, cannot possibly fail (though with less pleasant consequences) to produce hereafter. What a sad thing it is that the grand instructor, Time, has not yet been able to teach the grand lesson of his own value; and that, in every question of moral and political prudence, it is the choice of the moment which renders the measure serviceable or useless, noxious or salutary.

In the Catholic Question I considered only one point. Was it at the time, and in the circumstances, a measure which tended to promote the concord of the citizens? I have no difficulty in saying it was; and as little in saying that the present concord of the citizens was worth buying, at a critical season, by granting a few *capacities*, which probably no one man now living is likely to be served or hurt by. When any man tells *you* and *me* that, if these places were left in the discretion of a Protestant Crown, and these memberships in the discretion of Protestant electors, or patrons, we should have a Popish official system, and a Popish representation, capable of overturning the establishment, he only insults our understandings. When any man tells this to *Catholics*, he insults their understandings and he galls their feelings. It is not the question of the places and seats; it is the real hostile disposition, and the *pretended* fears, that leave stings in the minds of the people. I really thought that in the total of the late circumstances, with regard to persons, to things, to principles, and to measures, was to be found a conjunction favourable to the introduction, and to the perpetuation, of a general harmony, producing a general strength which to that hour Ireland was never so happy as to enjoy. My sanguine hopes are blasted, and I must consign my feelings on that terrible disappointment to the same patience in which I have been obliged to bury the vexation I suffered on the defeat of the other great, just, and honourable causes in which I have had some share; and which have given more of dignity than of peace and advantage to a long, laborious life. Though, perhaps, a want of success might be urged as a reason for making me doubt of the justice of the part I have taken,

yet, until I have other lights than one side of the debate has furnished me, I must see things, and feel them too, as I see and feel them. I think I can hardly overrate the malignity of the principles of Protestant ascendency, as they affect Ireland; or of Indianism, as they affect these countries, and as they affect Asia; or of Jacobinism, as they affect all Europe, and the state of human society itself. The last is the greatest evil. But it readily combines with the others, and flows from them. Whatever breeds discontent at this time will produce that great master-mischief most infallibly. Whatever tends to persuade the people that the *few*, called by whatever name you please, religious or political, are of opinion that their interest is not compatible with that of the *many*, is a great point gained to Jacobinism. Whatever tends to irritate the talents of a country, which have at all times, and at these particularly, a mighty influence on the public mind, is of infinite service to that formidable cause. Unless where Heaven has mingled uncommon ingredients, of virtue in the composition—*quos meliore luto finxit præcordia Titan*—talents naturally gravitate to Jacobinism. Whatever ill humours are afloat in the state, they will be sure to discharge themselves in a mingled torrent in the *cloacâ maximâ* of Jacobinism. Therefore people ought well to look about them. First, the physicians are to take care that they do nothing to irritate this epidemical distemper. It is a foolish thing to have the better of the patient in a dispute. The complaint, or its cause, ought to be removed, and wise and lenient arts ought to precede the measures of vigour. They ought to be the *ultima*, not the *prima*, not the *tota* ratio of a wise government. God forbid, that on a worthy occasion authority should want the means of force, or the disposition to use it. But where a prudent and enlarged policy does not precede it, and attend it too, where the hearts of the better sort of people do not go with the hands of the soldiery, you may call your constitution what you will, in effect it will consist of three parts, (orders, if you please,)—cavalry, infantry, and artillery,—and of nothing else or better.

I agree with you in your dislike of the discourses in Francis Street; but I like as little some of those in College Green. I am even less pleased with the temper that predominated in the latter, as better things might have been expected in

the regular family mansion of public discretion, than in a new and hasty assembly of unexperienced men, congregated under circumstances of no small irritation. After people have taken your tests, prescribed by yourselves as proofs of their allegiance, to be marked as enemies, traitors, or at best as suspected and dangerous persons, and that they are not to be believed on their oaths, we are not to be surprised if they fall into a passion, and talk, as men in a passion do, intemperately and idly.

The worst of the matter is this: you are partly leading, partly driving, into Jacobinism that description of your people whose religious principles—church polity, and habitual discipline—might make them an invincible dyke against that inundation. This you have a thousand mattocks and pick-axes lifted up to demolish. You make a sad story of the pope!—*O seri studiorum!*—It will not be difficult to get many called Catholics to laugh at this fundamental part of their religion. Never doubt it. You have succeeded in part; and you may succeed completely. But in the present state of men's minds and affairs do not flatter yourselves that they will piously look to the head of our church in the place of that pope whom you make them forswear; and out of all reverence to whom you bully, and rail, and buffoon them. Perhaps you may succeed in the same manner with all the other tenets of doctrine, and usages of discipline, amongst the Catholics. But what security have you that in the temper and on the principles on which they have made this change, they will stop at the exact sticking-places you have marked in *your* articles? You have no security for anything, but that they will become what are called *Franco-Jacobins*, and reject the whole together. No converts now will be made in a considerable number from one of our sects to the other upon a really religious principle. Controversy moves in another direction.

Next to religion, *property* is the great point of Jacobin attack. Here, many of the debaters in your majority, and their writers, have given the Jacobins all the assistance their hearts can wish. When the Catholics desire places and seats, you tell them that this is only a pretext (though Protestants might suppose it just *possible* for men to like good places and snug boroughs for their own merits); but that

their real view is to strip Protestants of their property. To my certain knowledge, till those Jacobin lectures were opened in the House of Commons, they never dreamt of any such thing; but now the great professors may stimulate them to inquire (on the new principles) into the foundation of that property, and of all property. If you treat men as robbers, why, robbers sooner or later they will become.

A third part of Jacobin attack is on *old traditionary constitutions*. You are apprehensive for yours, which leans from its perpendicular, and does not stand firm on its theory. I like parliamentary reforms as little as any man who has boroughs to sell for money, or for peerages, in Ireland. But it passes my comprehension, in what manner it is, that men can be reconciled to the *practical* merits of a constitution, the theory of which is in litigation, by being *practically* excluded from any of its advantages. Let us put ourselves in the place of these people, and try an experiment of the effects of such a procedure on our own minds. Unquestionably we should be perfectly satisfied when we were told that houses of parliament, instead of being places of refuge for popular liberty, were citadels for keeping us in order as a conquered people. These things play the Jacobin game to a nicety. Indeed, my dear Sir, there is not a single particular in the Francis Street declamations which has not, to your and to my certain knowledge, been taught by the jealous ascendants, sometimes by doctrine, sometimes by example, always by provocation. Remember the whole of 1781 and 1782—in parliament and out of parliament; at this very day, and in the worst acts and designs, observe the tenor of the objections with which the College Green orators of the ascendency reproach the Catholics. You have observed, no doubt, how much they rely on the affair of Jackson. Is it not pleasant to hear Catholics reproached for a supposed connexion—with whom?—with Protestant clergymen! with Protestant gentlemen! with Mr. Jackson!—with Mr. Rowan, &c. &c.! But *egomet mi ignosco*. Conspiracies and treasons are privileged pleasures, not to be profaned by the impure and unhallowed touch of Papists. Indeed, all this will do, perhaps, well enough with detachments of dismounted cavalry and fencibles from England. But let us not say to Catholics by way of *argument*, that they are to be kept in a degraded

state, because some of them are no better than many of us Protestants. The thing I most disliked in some of their speeches (those I mean of the Catholics) was what is called the spirit of liberality, so much and so diligently taught by the ascendants, by which they are made to abandon their own particular interests, and to merge them in the general discontents of the country. It gave me no pleasure to hear of the dissolution of the committee. There were in it a majority, to my knowledge, of very sober, well-intentioned men; and there were none in it but such who, if not continually goaded and irritated, might be made useful to the tranquillity of the country. It is right always to have a few of every description, through whom you may quietly operate on the many, both for the interests of the description, and for the general interest. Excuse me, my dear friend, if I have a little tried your patience. You have brought this trouble on yourself, by your thinking of a man forgot, and who has no objection to be forgot, by the world. These things we discussed together four or five and thirty years ago. We were then, and at bottom ever since, of the same opinion on the justice and policy of the whole, and of every part, of the penal system. You and I and everybody must now and then ply and bend to the occasion, and take what can be got. But very sure I am, that whilst there remains in the law any principle whatever which can furnish to certain politicians an excuse for raising an opinion of their own importance, as necessary to keep their fellow-subjects in order, the obnoxious people will be fretted, harassed, insulted, provoked to discontent and disorder, and practically excluded from the partial advantages from which the letter of the law does not exclude them.

Adieu! my dear Sir, and believe me very truly

Yours,

Beaconsfield, May 26, 1795. EDMUND BURKE.

LETTER TO RICHARD BURKE, ESQ.

MY DEAR SON,

We are all again assembled in town, to finish the last, but the most laborious, of the tasks which have been imposed upon me during my parliamentary service. We are as well

as at our time of life we can expect to be. We have, indeed, some moments of anxiety about you. You are engaged in an undertaking similar in its principle to mine. You are engaged in the relief of an oppressed people. In that service you must necessarily excite the same sort of passions in those who have exercised, and who wish to continue, that oppression that I have had to struggle with in this long labour. As your father has done, you must make enemies of many of the rich, of the proud, and of the powerful. I and you began in the same way. I must confess, that, if our place was of our choice, I could wish it had been your lot to begin the career of your life with an endeavour to render some more moderate, and less invidious, service to the public. But being engaged in a great and critical work, I have not the least hesitation about your having hitherto done your duty as becomes you. If I had not an assurance not to be shaken from the character of your mind, I should be satisfied on that point by the cry that is raised against you. If you had behaved, as they call it, discreetly, that is, faintly and treacherously, in the execution of your trust, you would have had, for a while, the good word of all sorts of men, even of many of those whose cause you had betrayed; and whilst your favour lasted you might have coined that false reputation into a true and solid interest to yourself. This you are well apprized of; and you do not refuse to travel that beaten road from an ignorance, but from a contempt, of the objects it leads to.

When you choose an arduous and slippery path, God forbid that any weak feelings of my declining age, which calls for soothings and supports, and which can have none but from you, should make me wish that you should abandon what you are about, or should trifle with it. In this House we submit, though with troubled minds, to that order which has connected all great duties with toils and with perils, which has conducted the road to glory through the regions of obloquy and reproach, and which will never suffer the disparaging alliance of spurious, false, and fugitive praise with genuine and permanent reputation. We know that the Power, which has settled that order, and subjected you to it by placing you in the situation you are in, is able to bring you out of it with credit and with safety. His will be done. All must come right. You may open the way with pain, and

under reproach. Others will pursue it with ease and with applause.

I am sorry to find that pride and passion, and that sort of zeal for religion which never shows any wonderful heat but when it afflicts and mortifies our neighbour, will not let the ruling description perceive, that the privilege for which your clients contend is very nearly as much for the benefit of those who refuse it, as those who ask it. I am not to examine into the charges that are daily made on the administration of Ireland. I am not qualified to say how much in them is cold truth, and how much rhetorical exaggeration. Allowing some foundation to the complaint, it is to no purpose that these people allege that their government is a job in its administration. I am sure it is a job in its constitution; nor is it possible a scheme of polity which, in total exclusion of the body of the community, confines (with little or no regard to their rank or condition in life) to a certain set of favoured citizens the rights which formerly belonged to the whole, should not, by the operation of the same selfish and narrow principles, teach the persons who administer in that government to prefer their own particular, but well understood, private interest to the false and ill calculated private interest of the monopolizing company they belong to. Eminent characters, to be sure, overrule places and circumstances. I have nothing to say to that virtue, which shoots up in full force by the native vigour of the seminal principle, in spite of the adverse soil and climate that it grows in. But, speaking of things in their ordinary course, in a country of monopoly there *can* be no patriotism. There may be a party spirit—but public spirit there can be none. As to a spirit of liberty, still less can it exist, or anything like it. A liberty made up of penalties! a liberty made up of incapacities! a liberty made up of exclusion and proscription, continued for ages, of four-fifths, perhaps, of the inhabitants of all ranks and fortunes! In what does such liberty differ from the description of the most shocking kind of servitude?

But, it will be said, in that country some people are free—why this is the very description of despotism! *Partial freedom is privilege and prerogative, and not liberty.* Liberty, such as deserves the name, is an honest, equitable, diffusive, and impartial principle. It is a great and enlarged virtue,

and not a sordid, selfish, and illiberal vice. It is the portion of the mass of the citizens; and not the haughty licence of some potent individual, or some predominant faction.

If anything ought to be despotic in a country, it is its government; because there is no cause of constant operation to make its yoke unequal. But the dominion of a party must continually, steadily, and by its very essence, lean upon the prostrate description. A constitution formed so as to enable a party to overrule its very government, and to overpower the people too, answers the purposes neither of government nor of freedom. It compels that power which ought, and often would be disposed, *equally* to protect the subjects, to fail in its trust, to counteract its purposes, and to become no better than the instrument of the wrongs of a faction. Some degree of influence must exist in all governments. But a government which has no interest to please the body of the people, and can neither support them, nor with safety call for their support, nor is of power to sway the domineering faction, can only exist by corruption; and, taught by that monopolizing party which usurps the title and qualities of the public, to consider the body of the people as out of the constitution, they will consider those who are in it in the light in which they choose to consider themselves. The whole relation of government and of freedom will be a battle, or a traffic.

This system in its real nature, and under its proper appellations, is odious and unnatural, especially when a constitution is admitted which not only, as all constitutions do profess, has a regard to the good of the multitude, but in its theory makes profession of their power also. But of late this scheme of theirs has been new christened—*honestum nomen imponitur vitio.* A word has been lately struck in the mint of the Castle of Dublin; thence it was conveyed to the Tholsel, or city-hall, where, having passed the touch of the corporation, so respectably stamped and vouched, it soon became current in parliament, and was carried back by the Speaker of the House of Commons in great pomp, as an offering of homage from whence it came. The word is *Ascendency.* It is not absolutely new. But the sense in which I have hitherto seen it used was to signify an influence obtained over the minds of some other person by

love and reverence, or by superior management and dexterity. It had, therefore, to this its promotion no more than a moral, not a civil or political, use. But I admit it is capable of being so applied; and if the Lord Mayor of Dublin, and the Speaker of the Irish parliament, who recommend the preservation of the Protestant ascendency, mean to employ the word in that sense, that is, if they understand by it the preservation of the influence of that description of gentlemen over the Catholics by means of an authority derived from their wisdom and virtue, and from an opinion they raise in that people of a pious regard and affection for their freedom and happiness, it is impossible not to commend their adoption of so apt a term into the family of politics. It may be truly said to enrich the language. Even if the Lord Mayor and Speaker mean to insinuate that this influence is to be obtained and held by flattering their people, by managing them, by skilfully adapting themselves to the humours and passions of those whom they would govern, he must be a very untoward critic who would cavil even at this use of the word, though such cajoleries would perhaps be more prudently practised than professed. These are all meanings laudable, or at least tolerable. But when we look a little more narrowly, and compare it with the plan to which it owes its present technical application, I find it has strayed far from its original sense. It goes much further than the privilege allowed by Horace. It is more than *parcè detortum.* This Protestant ascendency means nothing less than an influence obtained by virtue, by love, or even by artifice and seduction; full as little an influence derived from the means by which ministers have obtained an influence, which might be called, without straining, an *ascendency* in public assemblies in England, that is, by a liberal distribution of places and pensions, and other graces of government. This last is wide indeed of the signification of the word. New *ascendency* is the old mastership. It is neither more nor less than the resolution of one set of people in Ireland to consider themselves as the sole citizens in the commonwealth; and to keep a dominion over the rest by reducing them to absolute slavery under a military power; and, thus fortified in their power, to divide the public estate, which is the re-

sult of general contribution, as a military booty solely amongst themselves.

The poor word ascendency, so soft and melodious in its sound, so lenitive and emollient in its first usage, is now employed to cover to the world the most rigid, and perhaps not the most wise, of all plans of policy. The word is large enough in its comprehension. I cannot conceive what mode of oppression in civil life, or what mode of religious persecution, may not come within the methods of preserving an *ascendency*. In plain old English, as they apply it, it signifies *pride and dominion* on the one part of the relation, and on the other *subserviency and contempt*—and it signifies nothing else. The old words are as fit to be set to music as the new; but use has long since affixed to them their true signification, and they sound, as the other will, harshly and odiously to the moral and intelligent ears of mankind.

This ascendency, by being a *Protestant* ascendency, does not better it from the combination of a note or two more in this anti-harmonic scale. If Protestant ascendency means the proscription from citizenship of by far the major part of the people of any country, then Protestant ascendency is a bad thing; and it ought to have no existence. But there is a deeper evil. By the use that is so frequently made of the term, and the policy which is ingrafted on it, the name Protestant becomes nothing more or better than the name of a persecuting faction, with a relation of some sort of theological hostility to others, but without any sort of ascertained tenets of its own, upon the ground of which it persecutes other men; for the patrons of this Protestant ascendency neither do, nor can, by anything positive, define or describe what they mean by the word Protestant. It is defined, as Cowley defines wit, not by what it is, but by what it is not. It is not the Christian religion as professed in the churches holding communion with Rome, the majority of Christians; that is all which in the latitude of the term is known about its signification. This makes such persecutors ten times worse than any of that description that hitherto have been known in the world. The old persecutors, whether Pagan or Christian, whether Arian or Orthodox, whether Catholics, Anglicans, or Calvinists, actually were, or at least had the decorum

to pretend to be, strong dogmatists. They pretended that their religious maxims were clear and ascertained, and so useful, that they were bound, for the eternal benefit of mankind, to defend or diffuse them, though by any sacrifices of the temporal good of those who were the objects of their system of experiment.

The bottom of this theory of persecution is false. It is not permitted to us to sacrifice the temporal good of any body of men to our own ideas of the truth and falsehood of any religious opinions. By making men miserable in this life they counteract one of the great ends of charity; which is, inasmuch as in us lies, to make men happy in every period of their existence, and most in what most depends upon us. But give to these old persecutors their mistaken principle, in their reasoning they are consistent, and in their tempers they may be even kind and good-natured. But whenever a faction would render millions of mankind miserable,—some millions of the race co-existent with themselves, and many millions in their succession, without knowing, or so much as pretending to ascertain, the doctrines of their own school, (in which there is much of the lash and nothing of the lesson,) the errors which the persons in such a faction fall into are not those that are natural to human imbecility, nor is the least mixture of mistaken kindness to mankind an ingredient in the severities they inflict. The whole is nothing but pure and perfect malice. It is, indeed, a perfection in that kind belonging to beings of a higher order than man, and to them we ought to leave it.

This kind of persecutors, without zeal, without charity, know well enough that religion, to pass by all questions of the truth or falsehood of any of its particular systems, (a matter I abandon to the theologians on all sides,) is a source of great comfort to us mortals in this our short but tedious journey through the world. They know that to enjoy this consolation men must believe their religion upon some principle or other, whether of education, habit, theory, or authority. When men are driven from any of those principles on which they have received religion, without embracing with the same assurance and cordiality some other system, a dreadful void is left in their minds, and a terrible shock is given to their morals. They lose their guide, their comfort,

their hope. None but the most cruel and hard-hearted of men, who had banished all natural tenderness from their minds, such as those beings of iron, the atheists, could bring themselves to any persecution like this. Strange it is, but so it is, that men, driven by force from their habits in one mode of religion, have, by contrary habits, under the same force, often quietly settled in another. They suborn their reason to declare in favour of their necessity. Man and his conscience cannot always be at war. If the first races have not been able to make a pacification between the conscience and the convenience, their descendants come generally to submit to the violence of the laws, without violence to their minds. As things stood formerly, they possessed a *positive* scheme of direction, and of consolation. In this men may acquiesce. The harsh methods in use with the old class of persecutors were to make converts, not apostates only. If they perversely hated other sects and factions, they loved their own inordinately. But in this Protestant persecution there is anything but benevolence at work. What do the Irish statutes? They do not make a conformity to the *established* religion, and to its doctrines and practices, the condition of getting out of servitude. No such thing. Let three millions of people but abandon all that they and their ancestors have been taught to believe sacred, and to forswear it publicly in terms the most degrading, scurrilous, and indecent for men of integrity and virtue, and to abuse the whole of their former lives, and to slander the education they have received, and nothing more is required of them. There is no system of folly, or impiety, or blasphemy, or atheism, into which they may not throw themselves, and which they may not profess openly, and as a system, consistently with the enjoyment of all the privileges of a free citizen in the happiest constitution in the world.

Some of the unhappy assertors of this strange scheme say they are not persecutors on account of religion. In the first place they say what is not true. For what else do they disfranchise the people? If the man gets rid of a religion through which their malice operates, he gets rid of all their penalties and incapacities at once. They never afterwards inquire about him. I speak here of their pretexts, and not of the true spirit of the transaction, in which religious bigotry

I apprehend, has little share. Every man has his taste; but I think, if I were so miserable and undone as to be guilty of premeditated and continued violence towards any set of men, I had rather that my conduct was supposed to arise from wild conceits concerning their religious advantages than from low and ungenerous motives relative to my own selfish interest. I had rather be thought insane in my charity than rational in my malice. This much, my dear son, I have to say of this Protestant persecution; that is, a persecution of religion itself.

A very great part of the mischiefs that vex the world arises from words. People soon forget the meaning, but the impression and the passion remain. The word Protestant is the charm that locks up in the dungeon of servitude three millions of your people. It is not amiss to consider this spell of potency, this abracadabra, that is hung about the necks of the unhappy, not to heal, but to communicate disease. We sometimes hear of a Protestant *religion*, frequently of a Protestant *interest*. We hear of the latter the most frequently, because it has a positive meaning. The other has none. We hear of it the most frequently, because it has a word in the phrase, which, well or ill understood, has animated to persecution and oppression at all times infinitely more than all the dogmas in dispute between religious factions. These are indeed well formed to perplex and torment the intellect; but not half so well calculated to inflame the passions and animosities of men.

I do readily admit, that a great deal of the wars, seditions, and troubles of the world did formerly turn upon the contention between *interests* that went by the names of Protestant and Catholic. But I imagined that at this time no one was weak enough to believe, or imprudent enough to pretend, that questions of Popish and Protestant opinions, or interest, are the things by which men are at present menaced with crusades by foreign invasion, or with seditions which shake the foundations of the state at home. It is long since all this combination of things has vanished from the view of intelligent observers. The existence of quite another system of opinions and interests is now plain to the grossest sense. Are these the questions that raise a flame in the minds of men at this day? If ever the church and the constitution of

England should fall in these islands, (and they will fall together,) it is not Presbyterian discipline, nor Popish hierarchy, that will rise upon their ruins. It will not be the Church of Rome nor the Church of Scotland—not the Church of Luther, nor the Church of Calvin. On the contrary, all these Churches are menaced, and menaced alike. It is the new fanatical religion, now in the heat of its first ferment, of the Rights of Man, which rejects all establishments, all discipline, all ecclesiastical, and in truth all civil, order, which will triumph, and which will lay prostrate your church; which will destroy your distinctions, and which will put all your properties to auction, and disperse you over the earth. If the present establishment should fall, it is this religion which will triumph in Ireland and in England, as it has triumphed in France. This religion, which laughs at creeds, and dogmas, and confessions of faith, may be fomented equally amongst all descriptions, and all sects; amongst nominal Catholics, and amongst nominal churchmen, and amongst those dissenters who know little, and care less, about a presbytery, or any of its discipline, or any of its doctrine.

Against this new, this growing, this exterminatory system, all these churches have a common concern to defend themselves. How the enthusiasts of this rising sect rejoice to see you of the old churches play their game, and stir and rake the cinders of animosities sunk in their ashes, in order to keep up the execution of their plan for your common ruin!

I suppress all that is in my mind about the blindness of those of our clergy, who will shut their eyes to a thing which glares in such manifest day. If some wretches amongst an indigent and disorderly part of the populace raise a riot about tithes, there are of these gentlemen ready to cry out that this is an overt act of a treasonable conspiracy. Here the bulls, and the pardons, and the crusade, and the pope, and the thunders of the Vatican, are everywhere at work. There is a plot to bring in a foreign power to destroy the church. Alas! it is not about popes, but about potatoes, that the minds of this unhappy people are agitated. It is not from the spirit of zeal, but the spirit of whiskey, that these wretches act. Is it then not conceived possible that a poor clown can be unwilling, after paying three pounds rent to a gentleman in a brown coat, to pay fourteen shillings to

one in a black coat for his acre of potatoes, and tumultously to desire some modification of the charge, without being supposed to have no other motive than a frantic zeal for being thus double-taxed to another set of landholders, and another set of priests? Have men no self-interest? no avarice? no repugnance to public imposts? Have they no sturdy and restive minds? no undisciplined habits? Is there nothing in the whole mob of irregular passions which might precipitate some of the common people, in some places, to quarrel with a legal, because they feel it to be a burdensome, imposition? According to these gentlemen, no offence can be committed by Papists but from zeal to their religion. To make room for the vices of Papists, they clear the house of all the vices of men. Some of the common people (not one however in ten thousand) commit disorders. Well! punish them as you do, and as you ought to punish them, for their violence against the just property of each individual clergyman, as each individual suffers. Support the injured rector, or the injured impropriator, in the enjoyment of the estate of which (whether on the best plan or not) the laws have put him in possession. Let the crime and the punishment stand upon their own bottom. But now we ought all of us, clergymen most particularly, to avoid assigning another cause of quarrel, in order to infuse a new source of bitterness into a dispute which personal feelings on both sides will of themselves make bitter enough, and thereby involve in it, by religious descriptions, men who have individually no share whatsoever in those irregular acts. Let us not make the malignant fictions of our own imaginations, heated with factious controversies, reasons for keeping men that are neither guilty, nor justly suspected of crime, in a servitude equally dishonourable and unsafe to religion and to the state. When men are constantly accused, but know themselves not to be guilty, they must naturally abhor their accusers. There is no character, when malignantly taken up and deliberately pursued, which more naturally excites indignation and abhorrence in mankind; especially in that part of mankind which suffers from it.

I do not pretend to take pride in an extravagant attachment to any sect. Some gentlemen in Ireland affect that

sort of glory. It is to their taste. Their piety, I take it for granted, justifies the fervour of their zeal, and may palliate the excess of it. Being myself no more than a common layman, commonly informed in controversies, leading only a very common life, and having only a common citizen's interest in the church, or in the state, yet to you I will say, in justice to my own sentiments, that not one of those zealots for a Protestant interest wishes more sincerely than I do, perhaps not half so sincerely, for the support of the Established Church in both these kingdoms. It is a great link towards holding fast the connexion of religion with the state; and for keeping these two islands, in their present critical independence of constitution, in a close connexion of *opinion and affection*. I wish it well, as the religion of the greater number of the primary land-proprietors of the kingdom, with whom all establishments of church and state, for strong political reasons, ought in my opinion to be warmly connected. I wish it well, because it is more closely combined than any other of the church-systems with the *Crown*, which is the stay of the mixed constitution; because it is, as things now stand, the sole connecting *political* principle between the constitutions of the two independent kingdoms. I have another, and infinitely a stronger, reason for wishing it well; it is, that in the present time I consider it as one of the main pillars of the Christian religion itself. The body and substance of every religion I regard much more than any of the forms and dogmas of the particular sects. Its fall would leave a great void, which nothing else of which I can form any distinct idea might fill. I respect the Catholic hierarchy, and the Presbyterian republic. But I know that the hope or the fear of establishing either of them is, in these kingdoms, equally chimerical, even if I preferred one or the other of them to the Establishment, which certainly I do not.

These are some of my reasons for wishing the support of the Church of Ireland as by law established. These reasons are founded as well on the absolute as on the relative situation of that kingdom. But is it because I love the church, and the king, and the privileges of parliament, that I am to be ready for any violence, or any injustice, or any absurdity, in the means of supporting any of these powers, or all of them

together? Instead of prating about Protestant ascendencies, Protestant parliaments ought, in my opinion, to think at last of becoming patriot parliaments.

The legislature of Ireland, like all legislatures, ought to frame its laws to suit the people and the circumstances of the country, and not any longer to make it their whole business to force the nature, the temper, and the inveterate habits of a nation to a conformity to speculative systems concerning any kind of laws. Ireland has an established government, and a religion legally established, which are to be preserved. It has a people who are to be preserved too, and to be led by reason, principle, sentiment, and interest to acquiesce in that government. Ireland is a country under peculiar circumstances. The people of Ireland are a very mixed people; and the quantities of the several ingredients in the mixture are very much disproportioned to each other. Are we to govern this mixed body as if it were composed of the most simple elements, comprehending the whole in one system of benevolent legislation? or are we not rather to provide for the several parts according to the various and diversified necessities of the heterogeneous nature of the mass? Would not common reason and common honesty dictate to us the policy of regulating the people in the several descriptions of which they are composed, according to the natural ranks and classes of an orderly civil society, under a common protecting sovereign, and under a form of constitution favourable at once to authority and to freedom; such as the British constitution boasts to be, and such as it is, to those who enjoy it?

You have an ecclesiastical establishment, which, though the religion of the prince, and of most of the first class of landed proprietors, is not the religion of the major part of the inhabitants, and which, consequently, does not answer to *them* any one purpose of a religious establishment. This is a state of things which no man in his senses can call perfectly happy. But it is the state of Ireland. Two hundred years of experiment show it to be unalterable. Many a fierce struggle has passed between the parties. The result is—you cannot make the people Protestants—and they cannot shake off a Protestant government. This is what experience teaches, and what all men of sense, of all descriptions, know. To-

day the question is this—are we to make the best of this situation which we cannot alter? The question is—shall the condition of the body of the people be alleviated in other things, on account of their necessary suffering from their being subject to the burdens of two religious establishments, from one of which they do not partake the least, living or dying, either of instruction or of consolation; or shall it be aggravated by stripping the people thus loaded of everything which might support and indemnify them in this state, so as to leave them naked of every sort of right, and of every name of franchise; to outlaw them from the constitution, and to cut off (perhaps) three millions of plebeian subjects, without reference to property or any other qualification, from all connexion with the popular representation of the kingdom?

As to religion, it has nothing at all to do with the proceeding. Liberty is not sacrificed to a zeal for religion; but a zeal for religion is pretended and assumed, to destroy liberty. The Catholic religion is completely free. It has no establishment; but it is recognised, permitted, and in a degree protected by the laws. If a man is satisfied to be a slave, he may be a Papist with perfect impunity. He may say mass, or hear it, as he pleases; but he must consider himself as an outlaw from the British constitution. If the constitutional liberty of the subject were not the thing aimed at, the direct reverse course would be taken. The franchise would have been permitted, and the mass exterminated. But the conscience of a man left, and a tenderness for it hypocritically pretended, is to make it a trap to catch his liberty.

So much is this the design, that the violent partisans of this scheme fairly take up all the maxims and arguments, as well as the practices, by which tyranny has fortified itself at all times. Trusting wholly in their strength and power, (and upon this they reckon, as always ready to strike wherever they wish to direct the storm,) they abandon all pretext of the general good of the community. They say that if the people, under any given modification, obtain the smallest portion or particle of constitutional freedom, it will be impossible for them to hold their property. They tell us that they act only on the defensive. They inform the public of Europe, that their estates are made up of forfeitures and confiscations from the natives:—that if the body of people

obtain votes, any number of votes, however small, it will be a step to the choice of members of their own religion:—that the House of Commons, in spite of the influence of nineteen parts in twenty of the landed interest now in their hands, will be composed in the whole, or in far the major part, of Papists; that this Popish House of Commons will instantly pass a law to confiscate all their estates, which it will not be in their power to save even by entering into that Popish party themselves, because there are prior claimants to be satisfied;—that as to the House of Lords, though neither Papists nor Protestants have a share in electing them, the body of the peerage will be so obliging and disinterested as to fall in with this exterminatory scheme, which is to forfeit all their estates, the largest part of the kingdom; and, to crown all, that his Majesty will give his cheerful assent to this causeless act of attainder of his innocent and faithful Protestant subjects:—that they will be or are to be left without house or land, to the dreadful resource of living by their wits, out of which they are already frightened by the apprehension of this spoliation with which they are threatened:—that therefore they cannot so much as listen to any arguments drawn from equity or from national or constitutional policy; the sword is at their throats; beggary and famine at their door. See what it is to have a good look-out, and to see danger at the end of a sufficiently long perspective!

This is indeed to speak plain, though to speak nothing very new. The same thing has been said in all times and in all languages. The language of tyranny has been invariable; the general good is inconsistent with my personal safety. Justice and liberty seem so alarming to these gentlemen, that they are not ashamed even to slander their own titles; to calumniate, and call in doubt, their right to their own estates, and to consider themselves as novel disseizors, usurpers, and intruders, rather than lose a pretext for becoming oppressors of their fellow-citizens, whom they (not I) choose to describe themselves as having robbed.

Instead of putting themselves in this odious point of light, one would think they would wish to let Time draw his oblivious veil over the unpleasant modes by which lordships and demesnes have been acquired in theirs, and almost in all

other countries upon earth. It might be imagined that when the sufferer (if a sufferer exists) had forgot the wrong, they would be pleased to forget it too; that they would permit the sacred name of possession to stand in the place of the melancholy and unpleasant title of grantees of confiscation; which, though firm and valid in law, surely merits the name that a great Roman jurist gave to a title at least as valid in his nation as confiscation would be either in his or in ours,—*Tristis et luctuosa successio.*

Such is the situation of every man who comes in upon the ruin of another—his succeeding, under this circumstance, is *tristis et luctuosa successio.* If it had been the fate of any gentleman to profit by the confiscation of his neighbour, one would think he would be more disposed to give him a valuable interest under him in his land; or to allow him a pension, as I understand one worthy person has done, without fear or apprehension that his benevolence to a ruined family would be construed into a recognition of the forfeited title. The public of England the other day acted in this manner towards Lord Newburgh, a Catholic. Though the estate had been vested by law in the greatest of the public charities, they have given him a pension from his confiscation. They have gone further in other cases. On the last rebellion in 1745, in Scotland, several forfeitures were incurred. They had been disposed of by parliament to certain laudable uses. Parliament reversed the method, which they had adopted in Lord Newburgh's case, and, in my opinion, did better; they gave the forfeited estates to the successors of the forfeiting proprietors, chargeable in part with the uses. Is this, or anything like this, asked in favour of any human creature in Ireland? It is bounty; it is charity; wise bounty and politic charity; but no man can claim it as a right. Here no such thing is claimed as right, or begged as charity. The demand has an object as distant from all considerations of this sort as any two extremes can be. The people desire the privileges inseparably annexed, since Magna Charta, to the freehold which they have by descent, or obtain as the fruits of their industry. They call for no man's estate; they desire not to be dispossessed of their own.

But this melancholy and invidious title is a favourite (and like favourites, always of the least merit) with those who

possess every other title upon earth along with it. For this purpose they revive the bitter memory of every dissension which has torn to pieces their miserable country for ages. After what has passed in 1782, one would not think that decorum, to say nothing of policy, would permit them to call up, by magic charms, the grounds, reasons, and principles of those terrible confiscatory and exterminatory periods. They would not set men upon calling from the quiet sleep of death any Samuel, to ask him, by what act of arbitrary monarchs, by what inquisitions of corrupted tribunals and tortured jurors, by what fictitious tenures, invented to dispossess whole unoffending tribes and their chieftains! They would not conjure up the ghosts from the ruins of castles and churches, to tell for what attempt to struggle for the independence of an Irish legislature, and to raise armies of volunteers, without regular commissions from the Crown in support of that independence, the estates of the old Irish nobility and gentry had been confiscated. They would not wantonly call on those phantoms, to tell by what English acts of parliament, forced upon two reluctant kings, the lands of their country were put up to a mean and scandalous auction in every goldsmith's shop in London; or chopped to pieces, and cut into rations, to pay the mercenary soldiery of a regicide usurper. They would not be so fond of titles under Cromwell, who, if he avenged an Irish rebellion against the sovereign authority of the parliament of England, had himself rebelled against the very parliament whose sovereignty he asserted full as much as the Irish nation, which he was sent to subdue and confiscate, could rebel against that parliament, or could rebel against the king, against whom both he and the parliament which he served, and which he betrayed, had both of them rebelled.

The gentlemen who hold the language of the day know perfectly well that the Irish in 1641 pretended, at least, that they did not rise against the king, nor in fact did they, whatever constructions law might put upon their act. But full surely they rebelled against the authority of the parliament of England, and they openly professed so to do. Admitting (I have now no time to discuss the matter) the enormous and unpardonable magnitude of this their crime, they rued it in their persons, and in those of their children and their grand

children even to the fifth and sixth generations. Admitting, then, the enormity of this unnatural rebellion in favour of the independence of Ireland, will it follow that it must be avenged for ever? Will it follow that it must be avenged on thousands, and perhaps hundreds of thousands, of those whom they can never trace, by the labours of the most subtle metaphysician of the traduction of crimes, or the most inquisitive genealogist of proscription, to the descendant of any one concerned in that nefarious Irish rebellion against the parliament of England?

If, however, you could find out these pedigrees of guilt, I do not think the difference would be essential. History records many things which ought to make us hate evil actions; but neither history, nor morals, nor policy can teach us to punish innocent men on that account. What lesson does the iniquity of prevalent factions read to us? It ought to lesson us into an abhorrence of the abuse of our own power in our own day; when we hate its excesses so much in other persons and in other times. To that school true statesmen ought to be satisfied to leave mankind. They ought not to call from the dead all the discussions and litigations which formerly inflamed the furious factions which had torn their country to pieces; they ought not to rake into the hideous and abominable things which were done in the turbulent fury of an injured, robbed, and persecuted people, and which were afterwards cruelly revenged in the execution, and as outrageously and shamefully exaggerated in the representation, in order, an hundred and fifty years after, to find some colour for justifying them in the eternal proscription and civil excommunication of a whole people.

Let us come to a later period of those confiscations, with the memory of which the gentlemen who triumph in the acts of 1782 are so much delighted. The Irish again rebelled against the English parliament in 1688, and the English parliament again put up to sale the greatest part of their estates. I do not presume to defend the Irish for this rebellion; nor to blame the English parliament for this confiscation. The Irish, it is true, did not revolt from King James's power. He threw himself upon their fidelity, and they supported him to the best of their feeble power. Be the crime of that obstinate adherence to an abdicated sovereign against a prince

whom the parliaments of Ireland and Scotland had recognised what it may, I do not mean to justify this rebellion more than the former. It might, however, admit some palliation in them.. In generous minds some small degree of compassion might be excited for an error, where they were misled, as Cicero says to a conqueror, *quâdam specie et similitudine pacis*, not without a mistaken appearance of duty, and for which the guilty have suffered by exile abroad, and slavery at home, to the extent of their folly or their offence. The best calculators compute that Ireland lost 200,000 of her inhabitants in that struggle. If the principle of the English and Scottish resistance at the revolution is to be justified, (as sure I am it is,) the submission of Ireland must be somewhat extenuated. For if the Irish resisted King William, they resisted him on the very same principle that the English and Scotch resisted King James. The Irish Catholics must have been the very worst and the most truly unnatural of rebels, if they had not supported a prince whom they had seen attacked, not for any designs against *their* religion, or *their* liberties, but for an extreme partiality for their sect; and who, far from trespassing on *their* liberties and properties, secured both them and the independence of their country in much the same manner that we have seen the same things done at the period of 1782,—I trust the last revolution in Ireland.

That the Irish parliament of King James did in some particulars, though feebly, imitate the rigour which had been used towards the Irish, is true enough. Blameable enough they were for what they had done, though under the greatest possible provocation. I shall never praise confiscations or counter-confiscations as long as I live. When they happen by necessity I shall think the necessity lamentable and odious; I shall think that anything done under it ought not to pass into precedent, or to be adopted by choice, or to produce any of those shocking retaliations which never suffer dissensions to subside. Least of all would I fix the transitory spirit of civil fury by perpetuating and methodizing it in tyrannic government. If it were permitted to argue with power, might one not ask these gentlemen whether it would not be more natural, instead of wantonly mooting these questions concerning their property, as if it were an exercise

in law, to found it on the solid rock of prescription; the soundest, the most general, and the most recognised title between man and man, that is known in municipal or in public jurisprudence? a title, in which not arbitrary institutions, but the eternal order of things gives judgment; a title which is not the creature, but the master, of positive law; a title which, though not fixed in its term, is rooted in its principle, in the law of nature itself, and is, indeed, the original ground of all known property; for all property in soil will always be traced back to that source, and will rest there. The miserable natives of Ireland, who ninety-nine in a hundred are tormented with quite other cares, and are bowed down to labour for the bread of the hour, are not, as gentlemen pretend, plodding with antiquaries for titles of centuries ago to the estates of the great lords and 'squires for whom they labour. But if they were thinking of the titles which gentlemen labour to beat into their heads, where can they bottom their own claims but in a presumption and a proof that these lands had at some time been possessed by their ancestors? These gentlemen, for they have lawyers amongst them, know as well as I, that in England we have had always a prescription or limitation, as all nations have, against each other. The Crown was excepted; but that exception is destroyed, and we have lately established a sixty years' possession as against the Crown. All titles terminate in prescription; in which (differently from Time in the fabulous instances) the son devours the father, and the last prescription eats up all the former.

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LETTER ON THE AFFAIRS OF IRELAND.

WRITTEN IN THE YEAR 1797.

DEAR SIR,

In the reduced state of body and in the dejected state of mind in which I find myself at this very advanced period of my life, it is a great consolation to me to know that a

cause I ever had so very near my heart is taken up by a man of your activity and talents.

It is very true that your late friend, my ever dear and honoured son, was in the highest degree solicitous about the final event of a business which he also had pursued for a long time with infinite zeal, and no small degree of success. It was not above half an hour before he left me for ever that he spoke with considerable earnestness on this very subject. If I had needed any incentives to do my best for freeing the body of my country from the grievances under which they labour, this alone would certainly call forth all my endeavours.

The person who succeeded to the government of Ireland about the time of that afflicting event, had been all along of my sentiments and yours upon this subject: and far from needing to be stimulated by me, that incomparable person, and those in whom he strictly confided, even went before me in their resolution to pursue the great end of government, the satisfaction and concord of the people, with whose welfare they were charged. I cannot bear to think on the causes by which this great plan of policy, so manifestly beneficial to both kingdoms, has been defeated.

Your mistake with regard to me lies in supposing that I did not, when his removal was in agitation, strongly and personally represent to several of his Majesty's ministers, to whom I could have the most ready access, the true state of Ireland, and the mischiefs which sooner or later must arise from subjecting the mass of the people to the capricious and interested domination of an exceeding small faction and its dependencies.

That representation was made the last time, or very nearly the last time, that I have ever had the honour of seeing those ministers. I am so far from having any credit with them on this, or any other public matters, that I have reason to be certain, if it were known that any person in office in Ireland, from the highest to the lowest, were influenced by my opinions, and disposed to act upon them, such an one would be instantly turned out of his employment. You have formed to my person a flattering, yet in truth a very erroneous, opinion of my power with those who direct the public measures. I never have been directly or indirectly consulted about anything that is done. The judgment of the eminent

and able persons who conduct public affairs is undoubtedly superior to mine: but self-partiality induces almost every man to defer something to his own. Nothing is more notorious than that I have the misfortune of thinking that no one capital measure relative to political arrangements, and still less that a new military plan for the defence of either kingdom in this arduous war, has been taken upon any other principle than such as must conduct us to inevitable ruin.

In the state of my mind, so discordant with the tone of ministers, and still more discordant with the tone of opposition, you may judge what degree of weight I am likely to have with either of the parties who divide this kingdom; even though I were endowed with strength of body, or were possessed of any active situation in the government, which might give success to my endeavours. But the fact is, since the day of my unspeakable calamity, except in the attentions of a very few old and compassionate friends, I am totally out of all social intercourse. My health has gone down very rapidly; and I have been brought hither with very faint hopes of life, and enfeebled to such a degree as those who had known me some time ago could scarcely think credible. Since I came hither my sufferings have been greatly aggravated, and my little strength still further reduced; so that, though I am told the symptoms of my disorder begin to carry a more favourable aspect, I pass the far larger part of the twenty-four hours, indeed almost the whole, either in my bed, or lying upon the couch, from which I dictate this. Had you been apprized of this circumstance, you could not have expected anything, as you seem to do, from my active exertions. I could do nothing, if I was still stronger, not even "*Si meus adforet Hector.*"

There is no hope for the body of the people of Ireland, as long as those who are in power with you shall make it the great object of their policy to propagate an opinion on this side of the water, that the mass of their countrymen are not to be trusted by their government: and that the only hold which England has upon Ireland, consists in preserving a certain very small number of gentlemen in full possession of a monopoly of that kingdom. This system has disgusted many others besides Catholics and dissenters.

As to those who on your side are in the opposition to

government, they are composed of persons, several of whom I love and revere. They have been irritated by a treatment too much for the ordinary patience of mankind to bear, into the adoption of schemes, which, however *argumentatively* specious, would go *practically* to the inevitable ruin of the kingdom. The opposition always connects the emancipation of the Catholics with these schemes of reformation: indeed, it makes the former only a member of the latter project. The gentlemen who enforce that opposition are, in my opinion, playing the game of their adversaries with all their might; and there is no third party in Ireland (nor in England neither) to separate things, that are in themselves so distinct—I mean the admitting people to the benefits of the constitution, and the change in the form of the constitution itself.

As every one knows that a great part of the constitution of the Irish House of Commons was formed about the year 1614, expressly for bringing that House into a state of dependence; and that the new representative was at that time seated and installed by force and violence; nothing can be more impolitic than for those who wish the House to stand on its present basis, (as, for one, I most sincerely do,) to make it appear to have kept too much the principle of its first institution, and to continue to be as little a virtual, as it is an actual, representative of the commons. It is the *degeneracy* of such an institution, *so vicious in its principle*, that is to be wished for. If men have the real benefit of a *sympathetic* representation, none but those who are heated and intoxicated with theory will look for any other. This sort of representation, my dear Sir, must wholly depend, not on the force with which it is upheld, but upon the *prudence* of those who have influence upon it. Indeed, without some such prudence in the use of authority, I do not know, at least in the present time, how any power can long continue.

If it be true that both parties are carrying things to extremities in different ways, the object which you and I have in common, that is to say, the union and concord of our country, *on the basis of the actual representation*, without risking those evils which any change in the form of our legislature must inevitably bring on, can never be obtained. On the part of the Catholics (that is to say, of the body of the people of the kingdom) it is a terrible alternative, either to

submit to the yoke of declared and insulting enemies; or to seek a remedy in plunging themselves into the horrors and crimes of that Jacobinism, which unfortunately is not disagreeable to the principles and inclinations of, I am afraid, the majority of what we call the Protestants of Ireland. The Protestant part of that kingdom is represented by the government itself to be by whole counties in nothing less than open rebellion. I am sure that it is everywhere teeming with dangerous conspiracy.

I believe it will be found, that though the principles of the Catholics, and the incessant endeavours of their clergy, have kept them from being generally infected with the systems of this time, yet, whenever their situation brings them nearer into contact with the Jacobin Protestants, they are more or less infected with their doctrines.

It is a matter for melancholy reflection; but I am fully convinced that many persons in Ireland would be glad that the Catholics should become more and more infected with the Jacobin madness, in order to furnish new arguments for fortifying them in their monopoly. On any other ground it is impossible to account for the late language of your men in power. If statesmen, (let me suppose for argument,) upon the most solid political principles, conceive themselves obliged to resist the wishes of the far more numerous, and, as things stand, not the worse, part of the community, one would think they would naturally put their refusal as much as possible upon temporary grounds; and that they would act towards them in the most conciliatory manner, and would talk to them in the most gentle and soothing language; for refusal, in itself, is not a very gracious thing: and, unfortunately, men are very quickly irritated out of their principles. Nothing is more discouraging to the loyalty of any description of men, than to represent to them, that their humiliation and subjection make a principal part in the fundamental and invariable policy which regards the conjunction of these two kingdoms. This is not the way to give them a warm interest in that conjunction.

My poor opinion is that the closest connexion between Great Britain and Ireland is essential to the well-being, I had almost said, to the very being, of the two kingdoms. For that purpose I humbly conceive that the whole of the

superior, and what I should call *imperial*, politics ought to have its residence here; and that Ireland, locally, civilly, and commercially independent, ought politically to look up to Great Britain in all matters of peace or of war; in all those points to be guided by her; and, in a word, with her to live and to die. At bottom, Ireland has no other choice, I mean no other rational choice.

I think, indeed, that Great Britain would be ruined by the separation of Ireland; but, as there are degrees even in ruin, it would fall the most heavily on Ireland. By such a separation Ireland would be the most completely undone country in the world; the most wretched, the most distracted, and, in the end, the most desolate part of the habitable globe. Little do many people in Ireland consider how much of its prosperity has been owing to, and still depends upon, its intimate connexion with this kingdom. But, more sensible of this great truth than perhaps any other man, I have never conceived, or can conceive, that the connexion is strengthened by making the major part of the inhabitants of your country believe that their ease, and their satisfaction, and their equalization with the rest of their fellow-subjects of Ireland, are things adverse to the principles of that connexion; or that their subjection to a small monopolizing junto, composed of one of the smallest of their own internal factions, is the very condition upon which the harmony of the two kingdoms essentially depends. I was sorry to hear that this principle, or something not unlike it, was publicly and fully avowed by persons of great rank and authority in the House of Lords in Ireland.

As to a participation on the part of the Catholics in the privileges and capacities, which are withheld without meaning wholly to depreciate their importance, if I had the honour of being an Irish Catholic, I should be content to expect satisfaction upon that subject with patience, until the minds of my adversaries, few but powerful, were come to a proper temper; because, if the Catholics did enjoy without fraud, chicane, or partiality, some fair portion of those advantages, which the law, even as now the law is, leaves open to them; and if the rod were not shaken over them at every turn; their present condition would be tolerable; as compared with their former condition, it would be happy. But the most favourable laws can do very little towards the happiness of a people,

when the disposition of the ruling power is adverse to them. Men do not live upon blotted paper. The favourable or the hostile mind of the ruling power is of far more importance to mankind, for good or evil, than the black letter of any statute. Late acts of parliament, whilst they fixed at least a temporary bar to the hopes and progress of the larger description of the nation, opened to them certain subordinate objects of equality; but it is impossible that the people should imagine that any fair measure of advantage is intended to them, when they hear the laws, by which they were admitted to this limited qualification, publicly reprobated as excessive and inconsiderate. They must think that there is a hankering after the old penal and persecuting code. Their alarm must be great, when that declaration is made by a person in very high and important office in the House of Commons, and as the very first specimen and auspice of a new government.

All this is very unfortunate. I have the honour of an old acquaintance, and entertain, in common with you, a very high esteem for the few English persons who are concerned in the government of Ireland; but I am not ignorant of the relation these transitory ministers bear to the more settled Irish part of your administration. It is a delicate topic, upon which I wish to say but little; though my reflections upon it are many and serious. There is a great cry against English influence. I am quite sure that it is Irish influence that dreads the English habits.

Great disorders have long prevailed in Ireland. It is not long since that the Catholics were the suffering party from those disorders. I am sure they were not protected as the case required. Their sufferings became a matter of discussion in parliament. It produced the most infuriated declamation against them that I have ever read. An inquiry was moved into the facts. The declamation was at least tolerated, if not approved. The inquiry was absolutely rejected. In that case, what is left for those who are abandoned by government but to join with the persons who are capable of injuring them or protecting them, as they oppose or concur in their designs? This will produce a very fatal kind of union amongst the people; but it is a union which an unequal administration of justice tends necessarily to produce.

If anything could astonish one at this time, it is the war

that the rulers in Ireland think it proper to carry on against the person whom they call the pope, and against all his adherents, whenever they think they have the power of manifesting their hostility. Without in the least derogating from the talents of your theological politicians, or from the military abilities of your commanders (who act on the same principles) in Ireland, and without derogating from the zeal of either, it appears to me, that the Protestant directory of Paris, as statesmen, and the Protestant hero, Buonaparte, as a genera., have done more to destroy the said pope and all his adherents, in all their capacities, than the junto in Ireland have ever been able to effect. You must submit your *fasces* to theirs, and at best be contented to follow, with songs of gratulation, or invectives, according to your humour, the triumphal car of those great conquerors. Had that true Protestant *Hoche*, with an army not infected with the slightest tincture of Popery, made good his landing in Ireland, he would have saved you from a great deal of the trouble which is taken to keep under a description of your fellow-citizens, obnoxious to you from their religion. It would not have a month's existence, supposing his success. This is the alliance which, under the appearance of hostility, we act as if we wished to promote. All is well, provided we are safe from Popery.

It was not necessary for you, my dear Sir, to explain yourself to *me*, (in justification of your good wishes to your fellow-citizens,) concerning your total alienation from the principles of the Catholics. I am more concerned in what we agree than in what we differ. You know the impossibility of your forming any judgment upon the opinions, religious, moral, or political, of those who in the largest sense are called Protestants; at least as these opinions and tenets form a qualification for holding any civil, judicial, military, or even ecclesiastical situation. I have no doubt of the orthodox opinion of many both of the clergy and laity, professing the established religion in Ireland, and of many even amongst the dissenters, relative to the great points of the Christian faith: but that orthodoxy concerns them only as *individuals*. As a *qualification* for employment, we all know that in Ireland it is not necessary that they should profess any religion at all: so that the war that we make is upon

certain theological tenets, about which scholastic disputes are carried on *æquo Marte* by controvertists, on their side as able and as learned, and perhaps as well intentioned, as those are who fight the battle on the other part. To them I would leave those controversies. I would turn my mind to what is more within its competence, and has been more my study, (though for a man of the world I have thought of those things,) I mean the moral, civil, and political good of the countries we belong to, and in which God has appointed your station and mine. Let every man be as pious as he pleases, and in the way that he pleases; but it is agreeable neither to piety nor to policy to give exclusively all manner of civil privileges and advantages to a *negative* religion,—such is the Protestant without a certain creed; and at the same time to deny those privileges to men whom we know to agree to an iota in every one *positive* doctrine, which all of us, who profess the religion authoritatively taught in England, hold ourselves, according to our faculties, bound to believe. The Catholics of Ireland (as I have said) have the whole of our *positive* religion; our difference is only a negation of certain tenets of theirs. If we strip ourselves of *that* part of Catholicism, we abjure Christianity. If we drive them from that holding, without engaging them in some other positive religion, (which you know by our qualifying laws we do not,) what do we better than to hold out to them terrors on the one side, and bounties on the other, in favour of that which, for anything we know to the contrary, may be pure atheism?

You are well aware, that when a man renounces the Roman religion, there is no civil inconvenience or incapacity whatsoever which shall hinder him from joining any new or old sect of dissenters; or of forming a sect of his own invention upon the most antichristian principles. Let Mr. Thomas Paine obtain a pardon, (as on change of ministry he may,) there is nothing to hinder him from setting up a church of his own in the very midst of you. He is a natural-born British subject. His French citizenship does not disqualify him, at least upon a peace. This Protestant apostle is as much above all suspicion of Popery as the greatest and most zealous of your sanhedrim in Ireland can possibly be. On purchasing a qualification, (which his friends of the directory

are not so poor as to be unable to effect,) he may sit in parliament; and there is no doubt, that there is not one of your tests against Popery that he will not take as fairly and as much *ex animo* as the best of your zealous statesmen. I push this point no further; and only adduce this example (a pretty strong one, and fully in point) to show what I take to be the madness and folly of driving men, under the existing circumstances, from any *positive* religion whatever into the irreligion of the times, and its sure concomitant principles of anarchy.

When religion is brought into a question of civil and political arrangement, it must be considered more politically than theologically, at least by us who are nothing more than mere laymen. In that light the case of the Catholics of Ireland is peculiarly hard, whether they be laity or clergy. If any of them take part, like the gentleman you mention, with some of the most accredited Protestants of the country, in projects which cannot be more abhorrent to your nature and disposition than they are to mine,—in that case, however few these Catholic factions, who are united with factious Protestants, may be, (and very few they are now, whatever shortly they may become,) on their account the whole body is considered as of suspected fidelity to the Crown, and as wholly undeserving of its favour. But if, on the contrary, in those districts of the kingdom where their numbers are the greatest, where they make, in a manner, the whole body of the people, (as, out of cities, in three-fourths of the kingdom they do,) these Catholics show every mark of loyalty and zeal in support of the government, which at best looks on them with an evil eye; then their very loyalty is turned against their claims. They are represented as a contented and happy people; and that it is unnecessary to do anything more in their favour. Thus the factious disposition of a few among the Catholics, and the loyalty of the whole mass, are equally assigned as reasons for not putting them on a *par* with those Protestants who are asserted by the government itself, which frowns upon Papists, to be in a state of nothing short of actual rebellion, and in a strong disposition to make common cause with the worst foreign enemy that these countries have ever had to deal with. What in the end can come of all this?

As to the Irish Catholic clergy, their condition is likewise most critical: if they endeavour by their influence to keep a dissatisfied laity in quiet, they are in danger of losing the little credit they possess, by being considered as the instruments of a government adverse to the civil interests of their flock. If they let things take their course, they will be represented as colluding with sedition, or at least tacitly encouraging it. If they remonstrate against persecution, they propagate rebellion. Whilst government publicly avows hostility to that people, as a part of a regular system, there is no road they can take which does not lead to their ruin.

If nothing can be done on your side of the water, I promise you that nothing will be done here. Whether in reality, or only in appearance, I cannot possibly determine; but you will be left to yourselves by the ruling powers here. It is thus ostensibly and above-board; and in part, I believe, the disposition is real. As to the people at large in this country, I am sure they have no disposition to intermeddle in your affairs. They mean you no ill whatever; and they are too ignorant of the state of your affairs to be able to do you any good. Whatever opinion they have on your subject is very faint and indistinct; and if there is anything like a formed notion, even that amounts to no more than a sort of humming that remains on their ears of the burden of the old song about Popery. Poor souls, they are to be pitied, who think of nothing but dangers long passed by; and but little of the perils that actually surround them.

I have been long, but it is almost a necessary consequence of dictating, and that by snatches, as a relief from pain gives me the means of expressing my sentiments. They can have little weight as coming from me; and I have not power enough of mind or body to bring them out with their natural force. But I do not wish to have it concealed that I am of the same opinion to my last breath which I entertained when my faculties were at the best; and I have not held back from men in power in this kingdom, to whom I have very good wishes, any part of my sentiments on this melancholy subject, so long as I had means of access to persons of their consideration.

I have the honour to be, &c.

FRAGMENTS AND NOTES

OF

SPEECHES.

SPEECH

ON THE PETITION, WHICH WAS PRESENTED TO THE HOUSE OF COMMONS, FROM CERTAIN CLERGYMEN OF THE CHURCH OF ENGLAND, AND FROM CERTAIN OF THE TWO PROFESSIONS OF CIVIL LAW AND PHYSIC, AND OTHERS; PRAYING TO BE RELIEVED FROM SUBSCRIPTION TO THE THIRTY-NINE ARTICLES, AS REQUIRED BY THE ACTS OF UNIFORMITY.[1]

MR. SPEAKER,

I should not trouble the House upon this question, if I could at all acquiesce in many of the arguments, or justify the vote I shall give upon several of the reasons, which have been urged in favour of it. I should, indeed, be very much concerned if I were thought to be influenced to that vote by those arguments.

In particular, I do most exceedingly condemn all such arguments as involve any kind of reflection on the personal character of the gentlemen who have brought in a petition so decent in the style of it, and so constitutional in the mode. Besides the unimpeachable integrity and piety of many of the promoters of this petition, which render those aspersions as idle as they are unjust, such a way of treating the subject can have no other effect than to turn the attention of the House from the merits of the petition, the only thing properly be-

[1] The persons associated for this purpose were distinguished at the time by the name of "The Feathers Tavern Association," from the place where their meetings were usually held. Their petition was presented on the 6th of February, 1772; and on a motion that it should be brought up, the same was negatived on a division, in which Mr. Burke voted in the majority by 217 against 71.

fore us, and which we are sufficiently competent to decide upon, to the motives of the petitioners, which belong exclusively to the great Searcher of hearts.

We all know that those who loll at their ease in high dignities, whether of the church or of the state, are commonly averse to all reformation. It is hard to persuade them that there can be anything amiss in establishments, which by feeling experience they find to be so very comfortable. It is as true that from the same selfish motives those who are struggling upwards are apt to find everything wrong and out of order. These are truths upon one side and on the other; and neither on the one side or the other, in argument, are they worth a single farthing. I wish, therefore, so much had not been said upon these ill-chosen, and worse than ill-chosen, these very invidious, topics.

I wish still more that the dissensions and animosities which had slept for a century had not been just now most unseasonably revived. But if we must be driven, whether we will or not, to recollect these unhappy transactions, let our memory be complete and equitable, let us recollect the whole of them together. If the dissenters, as an honourable gentleman has described them, have formerly risen from a "whining, canting, snivelling generation," to be a body dreadful, and ruinous to all our establishments, let him call to mind the follies, the violences, the outrages, and persecutions, that conjured up, very blameably, but very naturally, that same spirit of retaliation. Let him recollect, along with the injuries, the services which dissenters have done to our church and to our state. If they have once destroyed, more than once they have saved them. This is but common justice, which they and all mankind have a right to.

There are, Mr. Speaker, besides the prejudices and animosities which I would have wholly removed from the debate, things more regularly and argumentatively urged against the petition; which, however, do not at all appear to me conclusive.

First, two honourable gentlemen, one near me, the other, I think, on the other side of the House, assert, that if you alter her symbols you destroy the being of the Church of England. This, for the sake of the liberty of that church, I must absolutely deny. The Church, like every body corpor-

ate, may alter her laws without changing her identity. As an independent church professing fallibility, she has claimed a right of acting without the consent of any other; as a church she claims, and has always exercised, a right of reforming whatever appeared amiss in her doctrine, her discipline, or her rites. She did so when she shook off the Papal supremacy in the reign of Henry the VIII., which was an act of the body of the English Church, as well as of the state (I don't inquire how obtained). She did so when she twice changed the liturgy in the reign of King Edward, when she then established Articles, which were themselves a variation from former professions. She did so when she cut off three Articles from her original 42, and reduced them to the present 39; and she certainly would not lose her corporate identity, nor subvert her fundamental principles, though she were to leave ten of the 39 which remain out of any future confession of her faith. She would limit her corporate powers, on the contrary, and she would oppose her fundamental principles, if she were to deny herself the prudential exercise of such capacity of reformation. This, therefore, can be no objection to your receiving the petition.

In the next place, Sir, I am clear that the act of union, reciting and ratifying one Scotch and one English act of parliament, has not rendered any change whatsoever in our church impossible, but by a dissolution of the union between the two kingdoms.

The honourable gentleman who has last touched upon that point has not gone quite so far as the gentlemen who first insisted upon it. However, as none of them wholly abandon that post, it will not be safe to leave it behind me unattacked. I believe no one will wish their interpretation of that act to be considered as authentic. What shall we think of the wisdom (to say nothing of the competence) of that legislature, which should ordain to itself such a fundamental law at its outset, as to disable itself from executing its own functions; which should prevent it from making any further laws, however wanted, and that, too, on the most interesting subject that belongs to human society, and where she most frequently wants its interposition; which should fix those fundamental laws that are for ever to prevent it from adapt-

ing itself to its opinions, however clear, or to its own necessities, however urgent? Such an act, Mr. Speaker, would for ever put the church out of its own power; it certainly would put it far above the state, and erect it into that species of independency which it has been the great principle of our policy to prevent.

The act never meant, I am sure, any such unnatural restraint on the joint legislature it was then forming. History shows us what it meant, and all that it could mean with any degree of common sense.

In the reign of Charles the First, a violent and ill-considered attempt was made, unjustly, to establish the platform of the government, and the rites of the Church of England in Scotland, contrary to the genius and desires of far the majority of that nation. This usurpation excited a most mutinous spirit in that country. It produced that shocking fanatical covenant (I mean the covenant of 36) for forcing their ideas of religion on England, and indeed on all mankind. This became the occasion, at length, of other covenants, and of a Scotch army marching into England to fulfil them; and the parliament of England (for its own purposes) adopted their scheme, took their last covenant, and destroyed the Church of England. The parliament, in their ordinance of 1643, expressly assign their desire of conforming to the Church of Scotland as a motive for their alteration.

To prevent such violent enterprises on the one side or on the other, since each church was going to be disarmed of a legislature wholly and peculiarly affected to it, and lest this new uniformity in the state should be urged as a reason and ground of ecclesiastical uniformity, the act of union provided, that presbytery should continue the Scotch, as episcopacy the English, establishment, and that this separate and mutually independent church-government was to be considered as a part of the union, without aiming at putting the regulation within each church out of its own power, without putting both churches out of the power of the state. It could not mean to forbid us to set anything ecclesiastical in order, but at the expense of tearing up all foundations, and forfeiting the inestimable benefits (for inestimable they are) which we derive from the happy union of the two kingdoms.

To suppose otherwise is to suppose that the act intended we could not meddle at all with the church, but we must as a preliminary destroy the state.

Well then, Sir, this is, I hope, satisfactory. The act of union does not stand in our way: but, Sir, gentlemen think we are not competent to the reformation desired, chiefly from our want of theological learning. If we were the legal assembly * * * * * *

If ever there was anything to which from reason, nature, habit, and principle, I am totally averse, it is persecution for conscientious difference in opinion. If these gentlemen complained justly of any compulsion upon them on that article, I would hardly wait for their petitions; as soon as I knew the evil I would haste to the cure; I would even run before their complaints.

I will not enter into the abstract merits of our Articles and Liturgy—perhaps there are some things in them which one would wish had not been there. They are not without the marks and characters of human frailty.

But it is not human frailty and imperfection, and even a considerable degree of them, that becomes a ground for your alteration; for by no alteration will you get rid of those errors, however you may delight yourselves in varying to infinity the fashion of them. But the ground for a legislative alteration of a legal establishment is this, and this only; that you find the inclinations of the majority of the people concurring with your own sense of the intolerable nature of the abuse are in favour of a change.

If this be the case in the present instance, certainly you ought to make the alteration that is proposed, to satisfy your own consciences, and to give content to your people. But if you have no evidence of this nature, it ill becomes your gravity, on the petition of a few gentlemen, to listen to anything that tends to shake one of the capital pillars of the state, and alarm the body of your people upon that one ground in which every hope and fear, every interest, passion, prejudice, everything which can affect the human breast, are all involved together. If you make this a season for religious alterations, depend upon it you will soon find it a season of religious tumults and religious wars.

These gentlemen complain of hardships. No considerable

number shows discontent; but, in order to give satisfaction to any number of respectable men, who come in so decent and constitutional a mode before us, let us examine a little what that hardship is. They want to be preferred clergymen in the Church of England as by law established; but their consciences will not suffer them to conform to the doctrines and practices of that church; that is, they want to be teachers in a church to which they do not belong; and it is an odd sort of hardship. They want to receive the emoluments appropriated for teaching one set of doctrines, whilst they are teaching another. A church, in any legal sense, is only a certain system of religious doctrines and practices, fixed and ascertained by some law; by the difference of which laws, different churches (as different commonwealths) are made in various parts of the world; and the establishment is a tax laid by the same sovereign authority for payment of those who so teach and so practise. For no legislature was ever so absurd as to tax its people to support men for teaching and acting as they please; but by some prescribed rule.

The hardship amounts to this, that the people of England are not taxed two shillings in the pound to pay them for teaching, as divine truths, their own particular fancies. For the state has so taxed the people; and, by way of relieving these gentlemen, it would be a cruel hardship on the people to be compelled to pay, from the sweat of their brow, the most heavy of all taxes to men, to condemn as heretical the doctrines which they repute to be orthodox, and to reprobate as superstitious the practices which they use as pious and holy. If a man leaves by will an establishment for preaching, such as Boyle's Lectures, or for charity sermons, or funeral sermons, shall any one complain of a hardship because he has an excellent sermon upon matrimony, or on the martyrdom of King Charles, or on the restoration, which I, the trustee of the establishment, will not pay him for preaching?—S. Jenyns, Origin of Evil. Such is the hardship which they complain of under the present church establishment, that they have not the power of taxing the people of England for the maintenance of their private opinions.

The laws of toleration provide for every real grievance that these gentlemen can rationally complain of. Are they hindered from professing their belief of what they think to

be truth? If they do not like the establishment, there are a hundred different modes of dissent in which they may teach. But even if they are so unfortunately circumstanced that of all that variety none will please them, they have free liberty to assemble a congregation of their own; and if any persons think their fancies (they may be brilliant imaginations) worth paying for, they are at liberty to maintain them as their clergy, nothing hinders it. But if they cannot get a hundred people together who will pay for their reading a liturgy after their form, with what face can they insist upon the nation's conforming to their ideas, for no other visible purpose than the enabling them to receive with a good conscience the tenth part of the produce of your lands?

Therefore, beforehand, the constitution has thought proper to take a security, that the tax raised on the people shall be applied only to those who profess such doctrines, and follow such a mode of worship, as the legislature, representing the people, has thought most agreeable to their general sense; binding, as usual, the minority not to an assent to the doctrines, but to a payment of the tax.

But how do you ease and relieve? How do you know that in making a new door into the church for these gentlemen you do not drive ten times their number out of it? Supposing the contents and not contents strictly equal in numbers and consequence, the possession, to avoid disturbance, ought to carry it. You displease all the clergy of England now actually in office for the chance of obliging a score or two, perhaps, of gentlemen who are, or want to be, beneficed clergymen; and do you oblige? Alter your liturgy, will it please all even of those who wish an alteration? Will they agree in what ought to be altered? And after it is altered to the mind of every one, you are no further advanced than if you had not taken a single step; because a large body of men will then say, you ought to have no liturgy at all. And then these men, who now complain so bitterly that they are shut out, will themselves bar the door against thousands of others. Dissent, not satisfied with toleration, is not conscience, but ambition.

You altered the liturgy for the Directory; this was settled by a set of most learned divines and learned laymen; Selden sat amongst them. Did this please? It was considered

upon both sides as a most unchristian imposition. Well, at the restoration they rejected the Directory, and reformed the Common Prayer, which, by the way, had been three times reformed before. Were they then contented? Two thousand (or some great number) of clergy resigned their livings in one day rather than read it; and truly, rather than raise that second idol, I should have adhered to the Directory as I now adhere to the Common Prayer. Nor can you content other men's conscience, real or pretended, by any concessions: follow your own; seek peace and ensue it. You have no symptoms of discontent in the people to their establishment. The churches are too small for their congregations. The livings are too few for their candidates. The spirit of religious controversy has slackened by the nature of things: by act you may revive it. I will not enter into the question how much truth is preferable to peace. Perhaps truth may be far better. But as we have scarcely ever the same certainty in the one that we have in the other, I would, unless the truth were evident indeed, hold fast to peace, which has in her company charity, the highest of the virtues.

This business appears in two points of view.—1st, Whether it is a matter of grievance. 2nd, Whether it is within our province to redress it with propriety and prudence. Whether it comes properly before us on a petition upon matter of grievance, I would not inquire too curiously. I know, technically speaking, that nothing agreeable to law can be considered as a grievance. But an over-attention to the rules of any act does sometimes defeat the ends of it, and I think it does so in this parliamentary act, as much at least as in any other. I know many gentlemen think that the very essence of liberty consists in being governed according to law; as if grievances had nothing real and intrinsic; but I cannot be of that opinion. Grievances may subsist by law. Nay, I do not know whether any grievance can be considered as intolerable until it is established and sanctified by law. If the act of toleration were not perfect, if there were a complaint of it, I would gladly consent to amend it. But when I heard a complaint of a pressure on religious liberty, to my astonishment I find that there was no complaint whatsoever of the insufficiency of the act of King William, nor any attempt to make it more sufficient. The

matter, therefore, does not concern toleration, but establishment; and it is not the rights of private conscience that are in question, but the propriety of the terms which are proposed by law as a title to public emoluments; so that the complaint is not that there is not toleration of diversity in opinion, but that diversity in opinion is not rewarded by bishoprics, rectories, and collegiate stalls. When gentlemen complain of the subscription as matter of grievance, the complaint arises from confounding private judgment, whose rights are anterior to law, and the qualifications which the law creates for its own magistracies, whether civil or religious. To take away from men their lives, their liberty, or their property, those things for the protection of which society was introduced, is great hardship and intolerable tyranny; but to annex any condition you please to benefits artificially created, is the most just, natural, and proper thing in the world. When *e novo* you form an arbitrary benefit, an advantage, pre-eminence, or emolument, not by nature, but institution, you order and modify it with all the power of a creator over his creature. Such benefits of institution are royalty, nobility, priesthood; all of which you may limit to birth; you might prescribe even shape and stature. The Jewish priesthood was hereditary. Founders' kinsmen have a preference in the election of Fellows in many colleges of our universities; the qualifications at All Souls are that they should be—*optimè nati, benè vestiti, mediocriter docti.*

By contending for liberty in the candidate for orders you take away the liberty of the elector, which is the people; that is, the state. If they can choose, they may assign a reason for their choice; if they can assign a reason, they may do it in writing, and prescribe it as a condition; they may transfer their authority to their representatives, and enable them to exercise the same. In all human institutions a great part, almost all regulations, are made from the mere necessity of the case, let the theoretical merits of the question be what they will. For nothing happened at the Reformation but what will happen in all such revolutions. When tyranny is extreme, and abuses of government intolerable, men resort to the rights of nature to shake it off. When they have done so, the very same principle of necessity of human affairs, to

establish some other authority, which shall preserve the order of this new institution, must be obeyed, until they grow intolerable; and you shall not be suffered to plead original liberty against such an institution. See Holland, Switzerland.

If you will have religion publicly practised and publicly taught, you must have a power to say what that religion will be which you will protect and encourage; and to distinguish it by such marks and characteristics as you in your wisdom shall think fit. As I said before, your determination may be unwise in this as in other matters, but it cannot be unjust, hard, or oppressive, or contrary to the liberty of any man, or in the least degree exceeding your province.

It is, therefore, as a grievance fairly none at all, nothing but what is essential not only to the order but to the liberty of the whole community.

The petitioners are so sensible of the force of these arguments, that they do admit of one subscription, that is, to the Scripture. I shall not consider how forcibly this argument militates with their whole principle against subscription as an usurpation on the rights of Providence; I content myself with submitting to the consideration of the House, that, if that rule were once established, it must have some authority to enforce the obedience; because you well know, a law without a sanction will be ridiculous. Somebody must sit in judgment on his conformity; he must judge on the charge; if he judges he must ordain execution. These things are necessary consequences one of the other; and then this judgment is an equal and a superior violation of private judgment; the right of private judgment is violated in a much greater degree than it can be by any previous subscription. You come round again to subscription, as the best and easiest method; men must judge of his doctrine, and judge definitively; so that either his test is nugatory, or men must first or last prescribe his public interpretation of it.

If the church be, as Mr. Locke defines it, *a voluntary society*, &c., then it is essential to this voluntary society to exclude from her voluntary society any member she thinks fit, or to oppose the entrance of any upon such conditions as she thinks proper. For otherwise it would be a voluntary society acting contrary to her will, which is a contradiction in

terms.—And this is Mr. Locke's opinion, the advocate for the largest scheme of ecclesiastical and civil toleration to Protestants (for to Papists he allows no toleration at all).

They dispute only the extent of the subscription; they, therefore, tacitly admit the equity of the principle itself. Here they do not resort to the original rights of nature, because it is manifest that those rights give as large a power of controverting every part of Scripture, or even the authority of the whole, as they do to the controverting any articles whatsoever. When a man requires you to sign an assent to Scripture, he requires you to assent to a doctrine as contrary to your natural understanding, and to your rights of free inquiry, as those who require your conformity to any one article whatsoever.

The subscription to Scripture is the most astonishing idea I ever heard, and will amount to just nothing at all. Gentlemen so acute have not, that I have heard, ever thought of answering a plain obvious question,—What is that Scripture to which they are content to subscribe? They do not think that a book becomes of divine authority because it is bound in blue morocco, and is printed by John Basket and his assigns. The Bible is a vast collection of different treatises; a man who holds the divine authority of one, may consider the other as merely human. What is his canon? The Jewish —St. Jerome's—that of the 39 Articles—Luther's—? There are some who reject the Canticles; others, six of the Epistles; the Apocalypse has been suspected even as heretical, and was doubted of for many ages, and by many great men. As these narrow the canon, others have enlarged it by admitting St. Barnabas's Epistles, the Apostolic Constitutions, to say nothing of many other Gospels. Therefore, to ascertain Scripture you must have one Article more; and you must define what that Scripture is which you mean to teach. There are, I believe, very few who, when Scripture is so ascertained, do not see the absolute necessity of knowing what general doctrine a man draws from it, before he is sent down authorized by the state to teach it as a pure doctrine, and receive a tenth of the produce of our lands.

The Scripture is no one summary of doctrines regularly digested, in which a man could not mistake his way; it is a most venerable, but most multifarious, collection of the re-

cords of the divine economy; a collection of an infinite variety of Cosmogony, Theology, History, Prophecy, Psalmody, Morality, Apologue, Allegory, Legislation, Ethics, carried through different books, by different authors, at different ages, for different ends and purposes.

It is necessary to sort out what is intended for example, what only as narrative, what to be understood literally, what figuratively, where one precept is to be controlled and modified by another,—what is used directly, and what only as an argument *ad hominem*,—what is temporary, and what of perpetual obligation,—what appropriated to one state, and to one set of men, and what the general duty of all Christians. If we do not get some security for this, we not only permit, but we actually pay for, all the dangerous fanaticism which can be produced to corrupt our people, and to derange the public worship of the country. We owe the best we can (not infallibility, but prudence) to the subject, first sound doctrine, then ability to use it. * * * *

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SPEECH[1]

ON THE SECOND READING OF A BILL FOR THE RELIEF OF PROTESTANT DISSENTERS.[2]

(1773.)

I ASSURE you, Sir, that the honourable gentleman, who spoke last but one, need not be in the least fear that I should make a war of particles upon his opinion, whether the Church of England *should*, *would*, or *ought* to be alarmed. I am very clear, that this House has no one reason in the world to think she is alarmed by the bill brought before you. It is some-

[1] This speech is given partly from the manuscript papers of Mr. Burke, and partly from a very imperfect short-hand note taken at the time by a member of the House of Commons.

[2] This bill was opposed by petitions from several congregations calling themselves "Protestant Dissenters;" who appear to have been principally composed of the people who are generally known under the denomination of "Methodists;" and particularly by a petition from a congregation of that description residing in the town of Chatham.

thing extraordinary, that the only symptom of alarm in the Church of England should appear in the petition of some dissenters; with whom, I believe, very few in this House are yet acquainted; and of whom you know no more than that you are assured by the honourable gentleman, that they are not Mahometans. Of the Church we know they are not, by the name that they assume. They are then dissenters. The first symptom of an alarm comes from some dissenters assembled round the lines of Chatham: these lines become the security of the Church of England! The honourable gentleman, in speaking of the lines of Chatham, tells us, that they serve not only for the security of the wooden walls of England, but for the defence of the Church of England. I suspect the wooden walls of England secure the lines of Chatham, rather than the lines of Chatham secure the wooden walls of England.

Sir, the Church of England, if only defended by this miserable petition upon your table, must, I am afraid, upon the principles of true fortification, be soon destroyed. But fortunately her walls, bulwarks, and bastions are constructed of other materials than of stubble and straw; are built up with the strong and stable matter of the gospel of liberty, and founded on a true, constitutional, legal establishment. But, Sir, she has other securities: she has the security of her own doctrines; she has the security of the piety, the sanctity, of her own professors; their learning is a bulwark to defend her; she has the security of the two universities, not shook in any single battlement, in any single pinnacle.

But the honourable gentleman has mentioned, indeed, principles which astonish me rather more than ever. The honourable gentleman thinks, that the dissenters enjoy a large share of liberty under a connivance; and he thinks that the establishing toleration by law is an attack upon Christianity.

The first of these is a contradiction in terms. Liberty under a connivance! Connivance is a relaxation from slavery, not a definition of liberty. What is connivance, but a state under which all slaves live? If I was to describe slavery, I would say with those who *hate* it, it is living under will, not under law: if as it is stated by its advocates, I would say, that, like earthquakes, like thunder, or other wars the elements make upon mankind, it happens rarely, it occasionally

comes now and then upon people, who, upon ordinary occasions, enjoy the same legal government of liberty. Take it under the description of those who would soften those features, the state of slavery and connivance is the same thing. If the liberty enjoyed be a liberty not of toleration, but of connivance, the only question is whether establishing such by law is an attack upon Christianity. Toleration an attack upon Christianity! What then, are we come to this pass, to suppose that nothing can support Christianity but the principles of persecution? Is that, then, the idea of establishment? Is it, then, the idea of Christianity itself, that it ought to have establishments, that it ought to have laws against dissenters, but the breach of which laws is to be connived at? What a picture of toleration; what a picture of laws, of establishments; what a picture of religious and civil liberty! I am persuaded the honourable gentleman does not see it in this light. But these very terms become the strongest reasons for my support of the bill; for I am persuaded, that toleration, so far from being an attack upon Christianity, becomes the best and surest support that possibly can be given to it. The Christian religion itself arose without establishment, it arose even without toleration; and whilst its own principles were not tolerated, it conquered all the powers of darkness, it conquered all the powers of the world. The moment it began to depart from these principles, it converted the establishment into tyranny; it subverted its foundations from that very hour. Zealous as I am for the principle of an establishment, so just an abhorrence do I conceive against whatever may shake it, I know nothing but the supposed necessity of persecution that can make an establishment disgusting. I would have toleration a part of establishment, as a principle favourable to Christianity, and as a part of Christianity.

All seem agreed that the law, as it stands, inflicting penalties on all religious teachers and on schoolmasters who do not sign the 39 Articles of Religion, ought not to be executed. We are all agreed that *the law is not good;* for that, I presume, is undoubtedly the idea of a law that ought not to be executed. The question, therefore, is, whether in a well-constituted commonwealth, which we desire ours to be thought, and I trust intend that it should be, whether in such a com-

monwealth it is wise to retain those laws which it is not proper to execute. A penal law, not ordinarily put in execution, seems to me to be a very absurd and a very dangerous thing. For if its principle be right, if the object of its prohibitions and penalties be a real evil, then you do in effect permit that very evil, which not only the reason of the thing, but your very law, declares ought not to be permitted; and thus it reflects exceedingly on the wisdom, and consequently derogates not a little from the authority of a legislature, who can at once forbid and suffer, and in the same breath promulgate penalty and indemnity to the same persons and for the very same actions. But if the object of the law be no moral or political evil, then you ought not to hold even a terror to those whom you ought certainly not to punish—for if it is not right to hurt, it is neither right nor wise to menace. Such laws, therefore, as they must be defective either in justice or wisdom, or both, so they cannot exist without a considerable degree of danger. Take them which way you will, they are pressed with ugly alternatives.

1st, All penal laws are either upon popular prosecution, or on the part of the Crown. Now, if they may be roused from their sleep, whenever a minister thinks proper, as instruments of oppression, then they put vast bodies of men into a state of slavery, and court dependence; since their liberty of conscience and their power of executing their functions depend entirely on his will. I would have no man derive his means of continuing any function, or his being restrained from it, but from the laws only; they should be his only superior and sovereign lords.

2nd, They put statesmen and magistrates into a habit of playing fast and loose with the laws, straining or relaxing them as may best suit their political purposes; and in that light tend to corrupt the executive power through all its offices.

3rd, If they are taken up on popular actions, their operation in that light also is exceedingly evil. They become the instruments of private malice, private avarice, and not of public regulation; they nourish the worst of men to the prejudice of the best, punishing tender consciences, and rewarding informers.

Shall we, as the honourable gentleman tells us we may

with perfect security, trust to the manners of the age? I am well pleased with the general manners of the times; but the desultory execution of penal laws, the thing I condemn, does not depend on the manners of the times. I would, however, have the laws tuned in unison with the manners;—very dissonant are a gentle country and cruel laws; very dissonant, that your reason is furious but your passions moderate, and that you are always equitable except in your courts of justice.

I will beg leave to state to the House one argument which has been much relied upon—that the dissenters are not unanimous upon this business; that many persons are alarmed; that it will create a disunion among the dissenters.

When any dissenters, or any body of people, come here with a petition, it is not the number of people, but the reasonableness of the request, that should weigh with the House. A body of dissenters come to this House, and say, Tolerate us—we desire neither the parochial advantage of tithes, nor dignities, nor the stalls of your cathedrals. No! let the venerable orders of the hierarchy exist with all their advantages. And shall I tell them, I reject your just and reasonable petition, not because it shakes the church, but because there are others, while you lie grovelling upon the earth, that will kick and bite you? Judge which of these descriptions of men comes with a fair request—that which says, Sir, I desire liberty for my own, because I trespass on no man's conscience;—or the other, which says, I desire that these men should not be suffered to act according to their consciences, though I am tolerated to act according to mine. But I sign a body of Articles, which is my title to toleration; I sign no more, because more are against my conscience. But I desire that you will not tolerate these men because they will not go so far as I, though I desire to be tolerated who will not go as far as you. No, imprison them, if they come within five miles of a corporate town, because they do not believe what I do in point of doctrines.

Shall I not say to these men, *arrangez vous, canaille?* You, who are not the predominant power, will not give to others the relaxation under which you are yourself suffered to live. I have as high an opinion of the doctrines of the church as you. I receive them implicitly, or I put my own explanation on them, or take that which seems to me to

come best recommended by authority. There are those of the dissenters, who think more rigidly of the doctrine of the articles relative to predestination than others do. They sign the article relative to it *ex animo*, and literally. Others allow a latitude of construction. These two parties are in the church, as well as among the dissenters; yet in the church we live quietly under the same roof. I do not see why, as long as Providence gives us no further light into this great mystery, we should not leave things as the Divine Wisdom has left them. But suppose all these things to me to be clear, (which Providence however seems to have left obscure,) yet whilst dissenters claim a toleration in things which, seeming clear to me, are obscure to them, without entering into the merit of the articles, with what face can these men say, Tolerate us, but do not tolerate them? Toleration is good for all, or it is good for none.

The discussion this day is not between establishment on one hand and toleration on the other, but between those who, being tolerated themselves, refuse toleration to others. That power should be puffed up with pride, that authority should degenerate into rigour, if not laudable, is but too natural. But this proceeding of theirs is much beyond the usual allowance to human weakness; it not only is shocking to our reason, but it provokes our indignation. *Quid domini facient, audent cum talia fures?* It is not the proud prelate thundering in his commission court, but a pack of manumitted slaves with the lash of the beadle flagrant on their backs, and their legs still galled with their fetters, that would drive their brethren into that prison-house from whence they have just been permitted to escape. If, instead of puzzling themselves in the depths of the Divine counsels, they would turn to the mild morality of the gospel, they would read their own condemnation—O thou wicked servant, I forgave thee all that debt because thou desiredst me: shouldest not thou also have compassion on thy fellow-servant, even as I had pity on thee?

In my opinion, Sir, a magistrate, whenever he goes to put any restraint upon religious freedom, can only do it upon this ground, that the person dissenting does not dissent from the scruples of ill-informed conscience, but from a party ground of dissension, in order to raise a faction in the state.

We give, with regard to rites and ceremonies, an indulgence to tender consciences. But if dissent is at all punished in any country, if at all it can be punished upon any pretence, it is upon a presumption, not that a man is supposed to differ conscientiously from the establishment, but that he resists truth for the sake of faction; that he abets diversity of opinions in religion to distract the state, and to destroy the peace of his country. This is the only plausible, for there is no true, ground of persecution. As the laws stand, therefore, let us see how we have thought fit to act.

If there is any one thing within the competency of a magistrate with regard to religion, it is this, that he has a right to direct the exterior ceremonies of religion; that whilst interior religion is within the jurisdiction of God alone, the external part, bodily action, is within the province of the chief governor. Hooker, and all the great lights of the church, have constantly argued this to be a part within the province of the civil magistrate; but look at the act of toleration of William and Mary; there you will see the civil magistrate has not only dispensed with those things which are more particularly within his province, with those things which faction might be supposed to take up for the sake of making visible and external divisions, and raising a standard of revolt, but has also from sound politic considerations relaxed on those points which are confessedly without his province.

The honourable gentleman, speaking of the heathens, certainly could not mean to recommend anything that is derived from that impure source. But he has praised the tolerating spirit of the heathens. Well! but the honourable gentleman will recollect that heathens, that polytheists, must permit a number of divinities. It is the very essence of its constitution. But was it ever heard that polytheism tolerated a dissent from a polytheistic establishment? the belief of one God only? Never, never! Sir, they constantly carried on persecution against that doctrine. I will not give heathens the glory of a doctrine, which I consider the best part of Christianity. The honourable gentleman must recollect the Roman law, that was clearly against the introduction of any foreign rites in matters of religion. You have it at large in Livy, how they persecuted in the first introduction the rites

of Bacchus: and even before Christ, to say nothing of their subsequent persecutions, they persecuted the Druids and others. Heathenism, therefore, as in other respects erroneous, was erroneous in point of persecution. I do not say, every heathen who persecuted was therefore an impious man: I only say he was mistaken, as such a man is now. But, says the honourable gentleman, they did not persecute Epicureans. No; the Epicureans had no quarrel with their religious establishment, nor desired any religion for themselves. It would have been very extraordinary, if irreligious heathens had desired either a religious establishment or toleration But, says the honourable gentleman, the Epicureans entered, as others, into the temples. They did so; they defied all subscription; they defied all sorts of conformity; there was no subscription to which they were not ready to set their hands, no ceremonies they refused to practise; they made it a principle of their irreligion outwardly to conform to any religion. These atheists eluded all that you could do; so will all free-thinkers for ever. Then you suffer, or the weakness of your law has suffered, those great dangerous animals to escape notice, whilst you have nets that entangle the poor fluttering silken wings of a tender conscience.

The honourable gentleman insists much upon this circumstance of objection, namely, the division amongst the dissenters. Why, Sir, the dissenters, by the nature of the term, are open to have a division among themselves. They are dissenters, because they differ from the Church of England; not that they agree among themselves. There are Presbyterians, there are Independents, some that do not agree to infant-baptism, others that do not agree to the baptism of adults, or any baptism. All these are, however, tolerated under the acts of King William, and subsequent acts; and their diversity of sentiments with one another did not, and could not, furnish an argument against their toleration when their difference with ourselves furnished none.

But, says the honourable gentleman, if you suffer them to go on, they will shake the fundamental principles of Christianity. Let it be considered, that this argument goes as strongly against connivance, which you allow, as against toleration, which you reject. The gentleman sets out with principle of perfect liberty, or, as he describes it, connivance.

But for fear of dangerous opinions you leave it in your power to vex a man, who has not held any one dangerous opinion whatsoever. If one man is a professed atheist, another man the best Christian, but dissents from two of the 39 Articles, I may let escape the atheist, because I know him to be an atheist, because I am, perhaps, so inclined myself, and because I may connive where I think proper; but the conscientious dissenter, on account of his attachment to that general religion, which perhaps I hate, I shall take care to punish, because I may punish when I think proper. Therefore connivance, being an engine of private malice or private favour, not of good government; an engine, which totally fails of suppressing atheism, but oppresses conscience; I say that principle becomes not serviceable, but dangerous to Christianity; that it is not toleration, but contrary to it, even contrary to peace; that the penal system to which it belongs is a dangerous principle in the economy either of religion or government.

The honourable gentleman, and in him I comprehend all those who oppose the bill, bestowed in support of their side of the question as much argument as it could bear, and much more of learning and decoration than it deserved. He thinks connivance consistent, but legal toleration inconsistent, with the interests of Christianity. Perhaps I would go as far as that honourable gentleman, if I thought toleration inconsistent with those interests. God forbid! I may be mistaken, but I take toleration to be a part of religion. I do not know which I would sacrifice; I would keep them both; it is not necessary I should sacrifice either. I do not like the idea of tolerating the doctrines of Epicurus: but nothing in the world propagates them so much as the oppression of the poor, of the honest, and candid disciples of the religion we profess in common,—I mean revealed religion; nothing sooner makes them take a short cut out of the bondage of sectarian vexation into open and direct infidelity, than tormenting men for every difference. My opinion is, that in establishing the Christian religion wherever you find it, curiosity or research is its best security; and in this way a man is a great deal better justified in saying, Tolerate all kinds of consciences, than in imitating the heathens, whom the honourable gentleman quotes, in tolerating those who have none.

I am not over-fond of calling for the secular arm upon these misguided, or misguiding, men; but if ever it ought to be raised, it ought surely to be raised against these very men, not against others, whose liberty of religion you make a pretext for proceedings which drive them into the bondage of impiety. What figure do I make in saying I do not attack the works of these atheistical writers, but I will keep a rod hanging over the conscientious man, their bitterest enemy, because these atheists may take advantage of the liberty of their foes to introduce irreligion? The best book that ever, perhaps, has been written against these people, is that in which the author has collected in a body the whole of the infidel code, and has brought the writers into one body to cut them off together. This was done by a dissenter, who never did subscribe the 39 Articles—Dr. Leland. But if, after all, this danger is to be apprehended, if you are really fearful that Christianity will indirectly suffer by this liberty, you have my free consent; go directly, and by the straight way, and not by a circuit, in which in your road you may destroy your friends, point your arms against these men, who do the mischief you fear promoting; point your arms against men who, not contented with endeavouring to turn your eyes from the blaze and effulgence of light, by which life and immortality is so gloriously demonstrated by the gospel, would even extinguish that faint glimmering of nature, that only comfort supplied to ignorant man before this great illumination—them, who, by attacking even the possibility of all Revelation, arraign all the dispensations of Providence to man. These are the wicked dissenters you ought to fear; these are the people against whom you ought to aim the shaft of the law; these are the men to whom, arrayed in all the terrors of government, I would say, you shall not degrade us into brutes; these men, these factious men, as the honourable gentleman properly called them, are the just objects of vengeance, not the conscientious dissenter; these men, who would take away whatever ennobles the rank or consoles the misfortunes of human nature, by breaking off that connexion of observances, of affections, of hopes and fears, which bind us to the Divinity, and constitute the glorious and distinguishing prerogative of humanity, that of being a religious creature; against these I would have the laws rise in all

their majesty of terrors, to fulminate such vain and impious wretches, and to awe them into impotence by the only dread they can fear or believe, to learn that eternal lesson—*Discite justitiam moniti, et non temnere Divos.*

At the same time that I would cut up the very root of atheism, I would respect all conscience; all conscience that is really such, and which, perhaps, its very tenderness proves to be sincere. I wish to see the established Church of England great and powerful; I wish to see her foundations laid low and deep, that she may crush the giant powers of rebellious darkness; I would have her head raised up to that heaven to which she conducts us. I would have her open wide her hospitable gate by a noble and liberal comprehension; but I would have no breaches in her wall; I would have her cherish all those who are within, and pity all those who are without; I would have her a common blessing to the world, an example, if not an instructor, to those who have not the happiness to belong to her; I would have her give a lesson of peace to mankind, that a vexed and wandering generation might be taught to seek for repose and toleration in the maternal bosom of Christian charity, and not in the harlot lap of infidelity and indifference. Nothing has driven people more into that house of seduction than the mutual hatred of Christian congregations. Long may we enjoy our church under a learned and edifying episcopacy. But episcopacy may fail, and religion exist. The most horrid and cruel blow that can be offered to civil society, is through atheism. Do not promote diversity; when you have it, bear it; have as many sorts of religion as you find in your country; there is a reasonable worship in them all. The others, the infidels, are outlaws of the constitution; not of this country, but of the human race. They are never, never to be supported, never to be tolerated. Under the systematic attacks of these people I see some of the props of good government already begin to fail; I see propagated principles, which will not leave to religion even a toleration. I see myself sinking every day under the attacks of these wretched people—How shall I arm myself against them? by uniting all those in affection, who are united in the belief of the great principles of the Godhead, that made and sustains the world. They who hold revelation give double assurance

to the country. Even the man who does not hold revelation, yet who wishes that it were proved to him, who observes a pious silence with regard to it, such a man, though not a Christian, is governed by religious principles. Let him be tolerated in this country. Let it be but a serious religion, natural or revealed, take what you can get; cherish, blow up the slightest spark. One day it may be a pure and holy flame. By this proceeding you form an alliance, offensive and defensive, against those great ministers of darkness in the world, who are endeavouring to shake all the works of God established in order and beauty—Perhaps I am carried too far; but it is in the road into which the honourable gentleman has led me. The honourable gentleman would have us fight this confederacy of the powers of darkness with the single arm of the Church of England; would have us not only fight against infidelity, but fight at the same time with all the faith in the world except our own. In the moment we make a front against the common enemy, we have to combat with all those who are the natural friends of our cause. Strong as we are we are not equal to this. The cause of the Church of England is included in that of religion, not that of religion in the Church of England. I will stand up at all times for the rights of conscience, as it is such, not for its particular modes against its general principles. One may be right, another mistaken; but if I have more strength than my brother, it shall be employed to support, not to oppress, his weakness; if I have more light, it shall be used to guide, not to dazzle him. * * * * *

SPEECH

ON A MOTION FOR LEAVE TO BRING IN A BILL TO REPEAL AND ALTER CERTAIN ACTS RESPECTING RELIGIOUS OPINIONS; MAY 11, 1792.[1]

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I NEVER govern myself, no rational man ever did govern himself, by abstractions and universals. I do not put abstract

[1] This motion was made by Mr. Fox; and was chiefly grounded upon a petition presented to the House of Commons by the Unitarian Society.

ideas wholly out of any question, because I well know that under that name I should dismiss principles; and that without the guide and light of sound, well-understood principles, all reasonings in politics, as in everything else, would be only a confused jumble of particular facts and details, without the means of drawing out any sort of theoretical or practical conclusion. A statesman differs from a professor in an university; the latter has only the general view of society; the former, the statesman, has a number of circumstances to combine with those general ideas, and to take into his consideration. Circumstances are infinite, are infinitely combined; are variable and transient; he who does not take them into consideration is not erroneous, but stark mad,—*dat operam ut cum ratione insaniat*,—he is metaphysically mad. A statesman, never losing sight of principles, is to be guided by circumstances; and, judging contrary to the exigencies of the moment, he may ruin his country for ever.

I go on this ground, that government, representing the society, has a general superintending control over all the actions, and over all the publicly propagated doctrines, of men, without which it never could provide adequately for all the wants of society; but then it is to use this power with an equitable discretion, the only bond of sovereign authority. For it is not, perhaps, so much by the assumption of unlawful powers, as by the unwise or unwarrantable use of those which are most legal, that governments oppose their true end and object; for there is such a thing as tyranny as well as usurpation. You can hardly state to me a case, to which legislature is the most confessedly competent, in which, if the rules of benignity and prudence are not observed, the most mischievous and oppressive things may not be done. So that after all it is a moral and virtuous discretion, and not any abstract theory of right, which keeps governments faithful to their ends. Crude, unconnected truths are in the world of practice what falsehoods are in theory.

A reasonable, prudent, provident, and moderate coercion may be a means of preventing acts of extreme ferocity and rigour; for by propagating excessive and extravagant doctrines, such extravagant disorders take place, as require the most perilous and fierce corrections to oppose them. It is not morally true that we are bound to establish in every

country that form of religion which in *our* minds is most agreeable to truth, and conduces most to the eternal happiness of mankind. In the same manner it is not true that we are, against the conviction of our own judgments, to establish a system of opinions and practices directly contrary to those ends, only because some majority of the people, told by the head, may prefer it. No conscientious man would willingly establish what he knew to be false and mischievous in religion, or in anything else. No wise man, on the contrary, would tyrannically set up his own sense so as to reprobate that of the great prevailing body of the community, and pay no regard to the established opinions and prejudices of mankind, or refuse to them the means of securing a religious instruction suitable to these prejudices. A great deal depends on the state in which you find men. * * *

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An alliance between church and state in a Christian commonwealth is, in my opinion, an idle and a fanciful speculation. An alliance is between two things that are in their nature distinct and independent, such as between two sovereign states. But in a Christian commonwealth the church and the state are one and the same thing, being different integral parts of the same whole. For the church has been always divided into two parts, the clergy and the laity; of which the laity is as much an essential, integral part, and has as much its duties and privileges, as the clerical member; and in the rule, order, and government of the church has its share. Religion is so far, in my opinion, from being out of the province of the duty of a Christian magistrate, that it is, and it ought to be, not only his care, but the principal thing in his care; because it is one of the great bonds of human society; and its object the supreme good, the ultimate end and object of man himself. The magistrate, who is a man, and charged with the concerns of men, and to whom very specially nothing human is remote and indifferent, has a right and a duty to watch over it with an unceasing vigilance; to protect, to promote, to forward it by every rational, just, and prudent means. It is principally his duty to prevent the abuses which grow out of every strong and efficient principle that actuates the human mind. As religion is one of the bonds of society, he ought not to suffer it to be made the pre-

text of destroying its peace, order, liberty, and its security. Above all, he ought strictly to look to it when men begin to form new combinations, to be distinguished by new names, and especially when they mingle a political system with their religious opinions, true or false, plausible or implausible.

It is the interest, and it is the duty, and because it is the interest and the duty it is the right, of government to attend much to opinions; because, as opinions soon combine with passions, even when they do not produce them, they have much influence on actions. Factions are formed upon opinions; which factions become in effect bodies corporate in the state;—nay, factions generate opinions in order to become a centre of union, and to furnish watch-words to parties; and this may make it expedient for government to forbid things in themselves innocent and neutral. I am not fond of defining with precision what the ultimate rights of the sovereign supreme power in providing for the safety of the commonwealth may be, or may not extend to. It will signify very little what my notions, or what their own notions, on the subject may be; because, according to the exigence, they will take, in fact, the steps which seem to them necessary for the preservation of the whole; for as self-preservation in individuals is the first law of nature, the same will prevail in societies, who will, right or wrong, make that an object paramount to all other rights whatsoever. There are ways and means by which a good man would not even save the commonwealth. * * * All things founded on the idea of danger ought in a great degree to be temporary. All policy is very suspicious that sacrifices any part to the ideal good of the whole. The object of the state is (as far as may be) the happiness of the whole. Whatever makes multitudes of men utterly miserable can never answer that object; indeed, it contradicts it wholly and entirely; and the happiness or misery of mankind, estimated by their feelings and sentiments, and not by any theories of their rights, is, and ought to be, the standard for the conduct of legislators towards the people. This naturally and necessarily conducts us to the peculiar and characteristic situation of a people, and to a knowledge of their opinions, prejudices, habits, and all the circumstances that diversify and colour life. The first question a good statesman would ask himself, therefore, would be,

how and in what circumstances do you find the society? and to act upon them.

To the other laws relating to other sects I have nothing to say. I only look to the petition which has given rise to this proceeding. I confine myself to that, because in my opinion its merits have little or no relation to that of the other laws which the right honourable gentleman has with so much ability blended with it. With the Catholics, with the Presbyterians, with the Anabaptists, with the Independents, with the Quakers, I have nothing at all to do. They are in *possession*, a great title in all human affairs. The tenor and spirit of our laws, whether they were restraining, or whether they were relaxing, have hitherto taken another course. The spirit of our laws has applied their penalty or their relief to the supposed abuse to be repressed, or the grievance to be relieved; and the provision for a Catholic and a Quaker has been totally different, according to his exigence; you did not give a Catholic liberty to be freed from an oath, or a Quaker power of saying mass with impunity. You have done this because you have laid it down as an universal proposition, as a maxim, that nothing relative to religion was your concern, but the direct contrary; and therefore you have always examined whether there was a grievance. It has been so at all times; the legislature, whether right or wrong, went no other way to work but by circumstances, times, and necessities. My mind marches the same road; my school is the practice and usage of parliament.

Old religious factions are volcanoes burnt out; on the lava, and ashes, and squalid scoriæ of old eruptions grow the peaceful olive, the cheering vine, and the sustaining corn. Such was the first, such the second, condition of Vesuvius. But when a new fire bursts out, a face of desolations comes on, not to be rectified in ages. Therefore, when men come before us, and rise up like an exhalation from the ground, they come in a questionable shape, and we must *exercise* them, and try whether their intents be wicked or charitable; whether they bring airs from heaven or blasts from hell. This is the first time that our records of parliament have heard, or our experience or history given us an account, of any religious congregation or association known by the name which these petitioners have assumed. We are now to see by what people, of what character, and under what temporary

circumstances, this business is brought before you. We are to see whether there be any, and what, mixture of political dogmas and political practices with their religious tenets, of what nature they are, and how far they are at present practically separable from them. This faction (the authors of the petition) are not confined to a *theological* sect, but are also a *political* faction. 1st, As theological, we are to show that they do not aim at the quiet enjoyment of their own liberty, but are *associated* for the express purpose of proselytism.—In proof of this first proposition, read their primary association. 2nd, That their purpose of proselytism is to collect a multitude sufficient by force and violence to overturn the church. In proof of the second proposition, see the letter of Priestley to Mr. Pitt, and extracts from his works. 3rd, That the designs against the church are concurrent with a design to subvert the state. In proof of the third proposition, read the advertisement of the Unitarian Society for celebrating the 14th of July. 4th, On what *model* they intend to build, that it is the *French*. In proof of the fourth proposition, read the correspondence of the Revolution Society with the clubs of France; read Priestley's adherence to their opinions. 5th, What the *French* is with regard to religious toleration, and with regard to, 1. Religion—2. Civil happiness—3. Virtue, order, and real liberty—4. Commercial opulence—5. National defence. In proof of the fifth proposition, read the representation of the French minister of the Home Department, and the report of the committee upon it.

Formerly, when the superiority of two parties contending for dogmas and an establishment was the question, we knew in such a contest the whole of the evil. We knew, for instance, that Calvinism would prevail according to the Westminster Catechism with regard to *tenets*. We knew that Presbytery would prevail in *church government*. But we do not know what opinions would prevail if the present dissenters should become masters. They will not tell us their present opinions; and one principle of modern dissent is, not to discover them. Next, as their religion is in a continual fluctuation, and is so by principle, and in profession, it is impossible for us to know what it will be. If religion only related to the individual, and was a question between God and the conscience, it would not be wise, nor in

my opinion equitable, for human authority to step in. But when religion is embodied into faction, and factions have objects to pursue, it will, and must, more or less, become a question of power between them. If even, when embodied into congregations, they limited their principle to their own congregations, and were satisfied themselves to abstain from what they thought unlawful, it would be cruel in my opinion to molest them in that tenet, and a consequent practice. But we know that they not only entertain these opinions, but entertain them with a zeal for propagating them by force, and employing the power of law and place to destroy establishments, if ever they should come to power sufficient to effect their purpose: that is, in other words, they declare they would persecute the heads of our church; and the question is, whether you should keep them within the bounds of toleration, or subject yourself to their persecution.

A bad and very censurable practice it is to warp doubtful and ambiguous expressions to a perverted sense, which makes the charge not the crime of others, but the construction of your own malice; nor is it allowed to draw conclusions from allowed premises, which those who lay down the premises utterly deny and disown as their conclusions. For this, though it may possibly be good logic, cannot by any possibility whatsoever be a fair or charitable representation of any man, or any set of men. It may show the erroneous nature of principles, but it argues nothing as to dispositions and intentions. Far be such a mode from me. A mean and unworthy jealousy it would be to do anything upon the mere speculative apprehension of what men will do. But let us pass by *our* opinions concerning the danger of the church. What do the gentlemen themselves think of that danger? They from whom the danger is apprehended, what do they declare to be their own designs? What do they conceive to be their own forces? and what do they proclaim to be their means? Their designs they declare to be to destroy the established church, and not to set up a new one of their own. See Priestley. If they should find the state stick to the church, the question is whether they love the constitution in *state* so well, as that they would not destroy the constitution of the state in order to destroy that of the church. Most certainly they do not.

The foundations on which obedience to governments is founded are not to be constantly discussed. That we are here supposes the discussion already made and the dispute settled. We must assume the rights of what represents the public to control the individual, to make his will and his acts to submit to their will, until some intolerable grievance shall make us know that it does not answer its end, and will submit neither to reformation nor restraint. Otherwise we should dispute all the points of morality before we can punish a murderer, robber, and adulterer; we should analyze all society. Dangers by being despised grow great; so they do by absurd provision against them. *Stulti est dixisse non putâram.* Whether an early discovery of evil designs, an early declaration, and an early precaution against them, be more wise than to stifle all inquiry about them, for fear they should declare themselves more early than otherwise they would, and therefore precipitate the evil—all this depends on the reality of the danger. Is it only an unbookish jealousy, as Shakspeare calls it? It is a question of fact. Does a design against the constitution of this country exist? If it does, and if it is carried on with increasing vigour and activity by a restless faction, and if it receives countenance by the most ardent and enthusiastic applauses of its object in the great council of this kingdom, by men of the first parts which this kingdom produces, perhaps by the first it has ever produced, can I think that there is no danger? If there be danger must there be no precaution at all against it? If you ask whether I think the danger urgent and immediate, I answer, thank God, I do not. The body of the people is yet sound, the constitution is in their hearts, while wicked men are endeavouring to put another into their heads. But if I see the very same beginnings which have commonly ended in great calamities, I ought to act as if they might produce the very same effects. Early and provident fear is the mother of safety; because in that state of things the mind is firm and collected, and the judgment unembarrassed. But when the fear, and the evil feared, come on together, and press at once upon us, deliberation itself is ruinous, which saves upon all other occasions; because, when perils are instant it delays decision; the man is in a flutter, and in a hurry, and his judgment is gone, as the judgment of the deposed king of

France and his ministers was gone, if the latter did not premeditately betray him. He was just come from his usual amusement of hunting, when the head of the column of treason and assassination was arrived at his house. Let not the king, let not the prince of Wales, be surprised in this manner. Let not both Houses of parliament be led in triumph along with him, and have law dictated to them by the Constitutional, the Revolution, and the Unitarian Societies. These insect reptiles, whilst they go on only caballing and toasting, only fill us with disgust; if they get above their natural size, and increase the quantity, whilst they keep the quality, of their venom, they become objects of the greatest terror. A spider in his natural size is only a spider, ugly and loathsome; and his flimsy net is only fit for catching flies. But, good God! suppose a spider as large as an ox, and that he spread cables about us, all the wilds of Africa would not produce anything so dreadful—

> Quale portentum neque militaris
> Daunia in latis alit esculetis,
> Nec Jubæ tellus generat leonum
> Arida nutrix.

Think of them, who dare menace in the way they do in their present state, what would they do if they had power commensurate to their malice? God forbid I ever should have a despotic master—but if I must, my choice is made. I will have Louis XVI. rather than Monsieur Bailly, or Brissot, or Chabot; rather George III., or George IV., than Dr. Priestley or Dr. Kippis,—persons who would not load a tyrannous power by the poisoned taunts of a vulgar, low-bred insolence. I hope we have still spirit enough to keep us from the one or the other. The contumelies of tyranny are the worst parts of it.

But if the danger be existing in reality, and silently maturing itself to our destruction, what, is it not better to take *treason* unprepared, than that *treason* should come by surprise upon us, and take us unprepared? If we must have a conflict, let us have it with all our forces fresh about us, with our government in full function and full strength, our troops uncorrupted, our revenues in the legal hands, our arsenals filled and possessed by government; and not wait till the conspirators, met to commemorate the 14th of July, shall

seize on the Tower of London and the magazines it contains, murder the governor, and the Mayor of London, seize upon the king's person, drive out the House of Lords, occupy your gallery, and thence, as from a high tribunal, dictate to you. The degree of danger is not only from the circumstances which threaten, but from the value of the objects which are threatened. A small danger menacing an inestimable object is of more importance than the greatest perils which regard one that is indifferent to us. The whole question of the danger depends upon facts. The first fact is, whether those who sway in France at present confine themselves to the regulation of their internal affairs, or whether upon system they nourish cabals in all other countries, to extend their power by producing revolutions similar to their own. 2. The next is, whether we have any cabals formed or forming within these kingdoms, to co-operate with them for the destruction of our constitution. On the solution of these two questions, joined with our opinion of the value of the object to be affected by their machinations, the justness of our alarm and the necessity of our vigilance must depend. Every private conspiracy, every open attack upon the laws, is dangerous. One robbery is an alarm to all property; else I am sure we exceed measure in our punishment. As robberies increase in number and audacity, the alarm increases. These wretches are at war with us upon principle. They hold this government to be an usurpation. See the language of the department.

The whole question is on the *reality* of the danger. Is it such a danger as would justify that fear, *qui cadere potest in hominem constantem et non metuentem?* This is the fear which the principles of jurisprudence declare to be a lawful and justifiable fear. When a man threatens my life openly and publicly, I may demand from him securities of the peace. When every act of a man's life manifests such a design stronger than by words, even though he does not make such a declaration, I am justified in being on my guard. They are of opinion, that they are already one-fifth of the kingdom. If so, their force is naturally not contemptible. To say that in all contests the decision will of course be in favour of the greater number, is by no means true in fact. For, first, the greater number is generally composed of men of sluggish

tempers, slow to act, and unwilling to attempt; and, by being in possession, are so disposed to peace, that they are unwilling to take early and vigorous measures for their defence, and they are almost always caught unprepared.

> Nec coiere pares: alter vergentibus annis
> In senium, longoque togæ tranquillior usu
> Dedidicit jam pace ducem;———
> Nec reparare novas vires, multumque priori
> Credere fortunæ. Stat magni nominis umbra.
> LUCAN, l. 129—135.

A smaller number, more expedite, awakened, active, vigorous, and courageous, who make amends for what they want in weight by their superabundance of velocity, will create an acting power of the greatest possible strength. When men are furiously and fanatically fond of an object, they will prefer it, as is well known, to their own peace, to their own property, and to their own lives; and can there be a doubt in such a case that they would prefer it to the peace of their country? Is it to be doubted, that, if they have not strength enough at home, they will call in foreign force to aid them? Would you deny them *what is reasonable* for fear they should? Certainly not. It would be barbarous to pretend to look into the minds of men. I would go further, it would not be just even to trace consequences from principles, which, though evident to me, were denied by them. Let them disband as a faction, and let them act as individuals; and when I see them with no other views than to enjoy their own conscience in peace, I for one shall most cheerfully vote for their relief.

A tender conscience, of all things, ought to be tenderly handled; for if you do not, you injure not only the conscience, but the whole moral frame and constitution is injured, recurring at times to remorse, and seeking refuge only in making the conscience callous. But the conscience of faction, the conscience of sedition, the conscience of conspiracy, war, and confusion * * * * * * * * * *

Whether anything be proper to be denied, which is right in itself, because it may lead to the demand of others, which it is improper to grant;—abstractedly speaking, there can be no doubt that this question ought to be decided in the negative. But as no moral questions are ever abstract ques-

tions, this, before I judge upon any abstract proposition, must be embodied in circumstances; for since things are right or wrong, morally speaking, only by their relation and connexion with other things, this very question of what it is politically right to grant depends upon this relation to its effects. It is the direct office of wisdom to look to the consequences of the acts we do; if it be not this, it is worth nothing, it is out of place and of function; and a downright fool is as capable of government as Charles Fox. A man desires a sword; why should he be refused? a sword is a means of defence, and defence is the natural right of man, —nay, the first of all his rights, and which comprehends them all. But if I know that the sword desired is to be employed to cut my own throat, common sense, and my own self-defence, dictate to me to keep out of his hands this natural right of the sword. But whether this denial be wise or foolish, just or unjust, prudent or cowardly, depends entirely on the state of the man's means. A man may have very ill dispositions, and yet be so very weak as to make all precaution foolish. See whether this be the case of these dissenters, as to their designs, as to their means, numbers, activity, zeal, foreign assistance.

The first question to be decided, when we talk of the church's being in danger from any particular measure, is, whether the danger to the church is a public evil; for to those who think that the national church establishment is itself a national grievance, to desire them to forward or to resist any measure upon account of its conducing to the safety of the church, or averting its danger, would be to the last degree absurd. If you have reason to think thus of it, take the reformation instantly into your own hands, whilst you are yet cool, and can do it in measure and proportion, and not under the influence of election tests and popular fury. But here I assume, that by far the greater number of those who compose the House are of opinion, that this national church establishment is a great national benefit, a great public blessing, and that its existence or its non-existence of course is a thing by no means indifferent to the public welfare; then, to them its danger or its safety must enter deeply into every question which has a relation to it. It is not because ungrounded alarms have been given that there never can exist

a real danger; perhaps the worst effect of an ungrounded alarm is to make people insensible to the approach of a real peril. Quakerism is strict, methodical, in its nature highly aristocratical, and so regular that it has brought the whole community to the condition of one family; but it does not actually interfere with the government. The principle of your petitioners is no passive conscientious dissent on account of an over-scrupulous habit of mind; the dissent on their part is fundamental, goes to the very root; and it is at issue not upon this rite or that ceremony, on this or that school opinion, but upon this one question of an establishment as unchristian, unlawful, contrary to the gospel and to natural right, Popish, and idolatrous. These are the principles violently and fanatically held and pursued—taught to their children, who are sworn at the altar like Hannibal. The war is with the establishment itself, no quarter, no compromise. As a party, they are infinitely mischievous; see the declarations of Priestley and Price—declarations, you will say, of *hot* men. Likely enough—but who are the *cool* men who have disclaimed them? not one,—no, not one. Which of them has ever told you that they do not mean to *destroy the church*, if ever it should be in their power? Which of them has told you, that this would not be the first and favourite use of any power they should get? not one,—no, not one. Declarations of hot men! The danger is thence, that they are under the *conduct* of hot men; *falsos in amore odia non fingere.*

They say they are well affected to the state, and mean only to destroy the church. If this be the utmost of their meaning, you must first consider whether you wish your church establishment to be destroyed; if you do, you had much better do it now in temper, in a grave, moderate, and parliamentary way. But if you think otherwise, and that you think it to be an invaluable blessing, a way fully sufficient to nourish a manly, rational, solid, and at the same time humble, piety; if you find it well fitted to the frame and pattern of your civil constitution; if you find it a barrier against fanaticism, infidelity, and atheism; if you find that it furnishes support to the human mind in the afflictions and distresses of the world, consolation in sickness, pain, poverty, and death; if it dignifies our nature with the hope of immortality, leaves inquiry free, whilst it preserves an authority to teach, where

authority only can teach, *communia altaria, æque ac patriam, diligite, colite, fovete.* * * * * * * * * * * * * *

In the discussion of this subject, which took place in the year 1790, Mr. Burke declared his intention, in case the motion for repealing the Test Acts had been agreed to, of proposing to substitute the following test in the room of what was intended to be repealed. "I *A. B.* do, in the presence of God, sincerely profess and believe, that a religious establishment in this state is not contrary to the law of God, or disagreeable to the law of nature, or to the true principles of the Christian religion, or that it is noxious to the community; and I do sincerely promise and engage, before God, that I never will, by any conspiracy, contrivance, or political device whatever, attempt, or abet others in any attempt, to subvert the constitution of the Church of England, as the same is now by law established, and that I will not employ any power or influence, which I may derive from any office corporate, or any other office, which I hold, or shall hold under His Majesty, his heirs and successors, to destroy and subvert the same; or, to cause members to be elected into any corporation, or into parliament, give my vote in the election of any member or members of parliament, or into any office, for or on account of their attachment to any other or different religious opinions or establishments, or with any hope that they may promote the same to the prejudice of the established church; but will dutifully and peaceably content myself with my private liberty of conscience, as the same is allowed by law.

"So help me God."

SPEECH

ON THE MOTION MADE IN THE HOUSE OF COMMONS, THE 7TH OF FEBRUARY, 1771, RELATIVE TO THE MIDDLESEX ELECTION.[1]

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In every complicated constitution (and every free constitution is complicated) cases will arise, when the several orders of the state will clash with one another; and disputes will arise about the limits of their several rights and privileges. It may be almost impossible to reconcile them. * * *

[1] This motion, which was for leave to bring in a bill to ascertain the rights of the electors in respect to the eligibility of persons to serve in parliament, was rejected by a majority of 167 against 103.

Carry the principle on by which you expelled Mr. Wilkes, there is not a man in the House, hardly a man in the nation, who may not be disqualified. That this House should have no power of expulsion, is a hard saying. That this House should have a general discretionary power of disqualification, is a dangerous saying. That the people should not choose their own representative, is a saying that shakes the constitution. That this House should name the representative, is a saying which, followed by practice, subverts the constitution. They have the right of electing, you have a right of expelling; they of choosing, you of judging, and only of judging, of the choice. What bounds shall be set to the freedom of that choice? Their right is prior to ours, we all originate there. They are the mortal enemies of the House of Commons, who would persuade them to think or to act as if they were a self-originated magistracy, independent of the people, and unconnected with their opinions and feelings. Under a pretence of exalting the dignity, they undermine the very foundations of this House. When the question is asked *here*, What disturbs the people, whence all this clamour? we apply to the treasury-bench, and they tell us it is from the efforts of libellers, and the wickedness of the people:—a worn-out ministerial pretence. If abroad the people are deceived by popular, within we are deluded by ministerial, cant. The question amounts to this, whether you mean to be a legal tribunal, or an arbitrary and despotic assembly. I see, and I feel, the delicacy and difficulty of the ground upon which we stand in this question. I could wish, indeed, that they who advise the Crown had not left parliament in this very ungraceful distress, in which they can neither retract with dignity nor persist with justice. Another parliament might have satisfied the people without lowering themselves. But our situation is not in our own choice; our conduct in that situation is all that is in our own option. The substance of the question is, to put bounds to your own power by the rules and principles of law. This is, I am sensible, a difficult thing to the corrupt, grasping, and ambitious part of human nature. But the very difficulty argues and enforces the necessity of it. First, because the greater the power the more dangerous the abuse. Since the revo-

lution, at least, the power of the nation has all flowed with a full tide into the House of Commons. Secondly, because the House of Commons, as it is the most powerful, is the most corruptible part of the whole constitution. Our public wounds cannot be concealed; to be cured they must be laid open. The public does think we are a corrupt body. In our *legislative capacity* we are, in most instances, esteemed a very wise body. In our judicial, we have no credit, no character at all. Our judgments stink in the nostrils of the people. They think us to be not only without virtue, but without shame. Therefore the greatness of our power, and the great and just opinion of our corruptibility and our corruption, render it necessary to fix some bound, to plant some landmark, which we are never to exceed. This is what the bill proposes. First, on this head, I lay it down as a fundamental rule in the law and constitution of this country, that this House has not by itself alone a legislative authority in any case whatsoever. I know that the contrary was the doctrine of the usurping House of Commons, which threw down the fences and bulwarks of law, which annihilated first the Lords, then the Crown, then its constituents. But the first thing that was done on the restoration of the constitution was to settle this point. Secondly, I lay it down as a rule, that the power of occasional incapacitation, on discretionary grounds, is a legislative power. In order to establish this principle, if it should not be sufficiently proved by being stated, tell me what are the criteria, the characteristics, by which you distinguish between a legislative and juridical act. It will be necessary to state, shortly, the difference between a legislative and a juridical act. A legislative act has no reference to any rule but these two, original justice and discretionary application. Therefore it can give rights; rights where no rights existed before; and it can take away rights where they were before established. For the law which binds all others does not and cannot bind the law-maker; he, and he alone, is above the law. But a judge, a person exercising a judicial capacity, is neither to apply to original justice, nor to a discretionary application of it. He goes to justice and discretion only at second-hand, and through the medium of some superiors. He is to work neither upon his opinion of

the one nor of the other; but upon a fixed rule, of which he has not the making, but singly and solely the *application* to the case.

The power assumed by the House neither is, nor can be, judicial power exercised according to known law. The properties of law are, first, that it should be known; secondly, that it should be fixed, and not occasional. First, this power cannot be according to the first property of law; because no man does or can know it, nor do you yourselves know upon what grounds you will vote the incapacity of any man. No man in Westminster Hall, or in any court upon earth, will say that is law upon which, if a man going to his counsel should say to him, What is my tenure in law of this estate? he would answer, Truly, Sir, I know not; the court has no rule but its own discretion; they will determine. It is not a fixed law—because you profess you vary it according to the occasion, exercise it according to your discretion; no man can call for it as a right. It is argued that the incapacity is not originally voted, but a consequence of a power of expulsion: but if you expel, not upon legal, but upon arbitrary, that is, upon discretionary, grounds, and the incapacity is *ex vi termini*, and inclusively comprehended in the expulsion, is not the incapacity voted in the expulsion? Are they not convertible terms? And if incapacity is voted to be inherent in expulsion, if expulsion be arbitrary, incapacity is arbitrary also. I have therefore shown that the power of incapacitation is a legislative power; I have shown that legislative power does not belong to the House of Commons; and therefore it follows that the House of Commons has not a power of incapacitation.

I know not the origin of the House of Commons, but am very sure that it did not create itself; the electors were prior to the elected; whose rights originated either from the people at large, or from some other form of legislature, which never could intend for the chosen a power of superseding the choosers.

If you have not a power of declaring an incapacity simply by the mere act of declaring it, it is evident to the most ordinary reason, you cannot have a right of expulsion, inferring, or rather including, an incapacity. For as the law, when it gives any direct right, gives also as necessary incidents all the means of acquiring the possession of that right; so where it

does not give a right directly, it refuses all the means by which such a right may by any mediums be exercised, or, in effect, be indirectly acquired. Else it is very obvious that the intention of the law in refusing that right might be entirely frustrated, and the whole power of the legislature baffled. If there be no certain, invariable rule of eligibility, it were better to get simplicity, if certainty is not to be had; and to resolve all the franchises of the subject into this one short proposition—the will and pleasure of the House of Commons.

The argument drawn from the courts of law applying the principles of law to new cases as they emerge is altogether frivolous, inapplicable, and arises from a total ignorance of the bounds between civil and criminal jurisdiction, and of the separate maxims that govern these two provinces of law, that are eternally separate. Undoubtedly the courts of law, where a new case comes before them, as they do every hour, then, that there may be no defect in justice, call in similar principles, and the example of the nearest determination, and do everything to draw the law to as near a conformity to general equity and right reason as they can bring it with its being a fixed principle. *Boni judicis est ampliare justitiam*—that is, to make open and liberal justice. But in criminal matters this parity of reason, and these analogies, ever have been, and ever ought to be, shunned.

Whatever is incident to a court of judicature is necessary to the House of Commons, as judging in elections. But a power of making incapacities is not necessary to a court of judicature—therefore a power of making incapacities is not necessary to the House of Commons.

Incapacity, declared by whatever authority, stands upon two principles. First, an incapacity arising from the supposed incongruity of two duties in the commonwealth. Secondly, an incapacity arising from unfitness by infirmity of nature or the criminality of conduct. As to the first class of incapacities, they have no *hardship* annexed to them. The persons so incapacitated are paid by one dignity for what they abandon in another, and, for the most part, the situation arises from their own choice. But as to the second, arising from an unfitness not fixed by nature, but superinduced by some positive acts, or arising from honourable motives, such

as an occasional personal disability, of all things it ought to be defined by the fixed rule of law—what Lord Coke calls the golden metwand of the law, and not by the crooked cord of discretion. Whatever is general is better born. We take our common lot with men of the same description. But to be selected and marked out by a particular brand of unworthiness among our fellow-citizens, is a lot of all others the hardest to be borne; and consequently is of all others that act which ought only to be trusted to the legislature, as not only *legislative* in its nature, but of all parts of legislature the most odious. The question is over, if this is shown not to be a legislative act. But what is very usual and natural, is to corrupt judicature into legislature. On this point it is proper to inquire whether a court of judicature, which decides without appeal, has it as a necessary incident of such judicature, that whatever it decides is *de jure* law. Nobody will, I hope, assert this, because the direct consequence would be the entire extinction of the difference between true and false judgments. For if the judgment makes the law, and not the law directs the judgment, it is impossible there should be such a thing as an illegal judgment given.

But instead of standing upon this ground, they introduce another question, wholly foreign to it, whether it ought not to be submitted to as if it were law. And then the question is,—by the constitution of this country, what degree of submission is due to the authoritative acts of a limited power? This question of submission, determine it how you please, has nothing to do in this discussion, and in this House. Here it is not how long the people are bound to tolerate the illegality of our judgments, but whether we have a right to substitute our occasional opinion in the place of law; so as to deprive the citizen of his franchise. * * * *

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SPEECH

ON A BILL FOR SHORTENING THE DURATION OF PARLIAMENTS.[1]

It is always to be lamented when men are driven to search into the foundations of the commonwealth. It is certainly necessary to resort to the theory of your government whenever you propose any alteration in the frame of it, whether that alteration means the revival of some former antiquated and forsaken constitution of state, or the introduction of some new improvement in the commonwealth. The object of our deliberation is to promote the good purposes for which elections have been instituted, and to prevent their inconveniences. If we thought frequent elections attended with no inconvenience, or with but a trifling inconvenience, the strong overruling principle of the constitution would sweep us like a torrent towards them. But your remedy is to be suited to your disease—your present disease, and to your whole disease. That man thinks much too highly, and therefore he thinks weakly and delusively, of any contrivance of human wisdom, who believes that it can make any sort of approach to perfection. There is not, there never was, a principle of government under heaven, that does not, in the very pursuit of the good it proposes, naturally and inevitably lead into some inconvenience, which makes it absolutely necessary to counterwork and weaken the application of that first principle itself; and to abandon something of the extent of the advantage you proposed by it, in order to prevent also the inconveniences which have arisen from the instrument of all the good you had in view.

To govern according to the sense and agreeably to the interests of the people, is a great and glorious object of government. This object cannot be obtained but through the medium of popular election; and popular election is a mighty evil. It is such, and so great an evil, that though there are

[1] This speech was delivered upon one of those motions which for many successive years were made by Mr. Sawbridge, for shortening the duration of parliaments; but the precise date cannot be ascertained.

few nations whose monarchs were not originally elective, very few are now elected. They are the distempers of elections that have destroyed all free states. To cure these distempers is difficult, if not impossible; the only thing, therefore, left to save the commonwealth is to prevent their return too frequently. The objects in view are, to have parliaments as frequent as they can be without distracting them in the prosecution of public business; on one hand to secure their dependence upon the people; on the other to give them that quiet in their minds, and that ease in their fortunes, as to enable them to perform the most arduous and most painful duty in the world with spirit, with efficiency, with independency, and with experience, as real public counsellors, not as the canvassers at a perpetual election. It is wise to compass as many good ends as possibly you can, and, seeing there are inconveniences on both sides, with benefits on both, to give up a part of the benefit to soften the inconvenience. The perfect cure is impracticable, because the disorder is dear to those from whom alone the cure can possibly be derived. The utmost to be done is to palliate, to mitigate, to respite, to put off the evil day of the constitution to its latest possible hour, and may it be a very late one!

This bill, I fear, would precipitate one of two consequences, I know not which most likely, or which most dangerous; either that the Crown, by its constant stated power, influence, and revenue, would wear out all opposition in elections, or that a violent and furious popular spirit would arise. I must see, to satisfy me, the remedies; I must see, from their operation in the cure of the old evil, and in the cure of those new evils which are inseparable from all remedies, how they balance each other, and what is the total result. The excellence of mathematics and metaphysics is to have but one thing before you; but he forms the best judgment in all moral disquisitions, who has the greatest number and variety of considerations in one view before him, and can take them in with the best possible consideration of the middle results of all.

We of the opposition, who are not friends to the bill, give this pledge at least of our integrity and sincerity to the people, that in our situation of systematic opposition to the

present ministers, in which all our hope of rendering it effectual depends upon popular interest and favour, we will not flatter them by a surrender of our uninfluenced judgment and opinion; we give a security, that, if ever we should be in another situation, no flattery to any other sort of power and influence would induce us to act against the true interests of the people.

All are agreed that parliaments should not be perpetual; the only question is, what is the most convenient time for their duration? On which there are three opinions. We are agreed, too, that the term ought not to be chosen most likely in its operation to spread corruption, and to augment the already overgrown influence of the Crown. On these principles I mean to debate the question. It is easy to pretend a zeal for liberty. Those who think themselves not likely to be encumbered with the performance of their promises, either from their known inability, or total indifference about the performance, never fail to entertain the most lofty ideas. They are certainly the most specious, and they cost them neither reflection to frame, nor pains to modify, nor management to support. The task is of another nature to those who mean to promise nothing that it is not in their intention, or may possibly be in their power, to perform; to those who are bound and principled no more to delude the understandings than to violate the liberty of their fellow-subjects. Faithful watchmen we ought to be over the rights and privileges of the people. But our duty, if we are qualified for it as we ought, is to give them information, and not to receive it from them; we are not to go to school to them to learn the principles of law and government. In doing so, we should not dutifully serve, but we should basely and scandalously betray, the people, who are not capable of this service by nature, nor in any instance called to it by the constitution. I reverentially look up to the opinion of the people, and with an awe that is almost superstitious. I should be ashamed to show my face before them if I changed my ground, as they cried up or cried down men, or things, or opinions; if I wavered and shifted about with every change, and joined in it, or opposed, as best answered any low interest or passion; if I held them up hopes which I knew I never intended, or promised what I well knew I

could not perform. Of all these things they are perfect sovereign judges, without appeal; but as to the detail of particular measures, or to any general schemes of policy, they have neither enough of speculation in the closet, nor of experience in business, to decide upon it. They can well see whether we are tools of a court, or their honest servants. Of that they can well judge; and I wish that they always exercised their judgment; but of the particular merits of a measure I have other standards. * * * * * * * * That the frequency of elections proposed by this bill has a tendency to increase the power and consideration of the electors, not lessen corruptibility, I do most readily allow; so far it is desirable; this is what it has, I will tell you now what it has not. 1st, It has no sort of tendency to increase their integrity and public spirit, unless an increase of power has an operation upon voters in elections that it has in no other situation in the world, and upon no other part of mankind. 2nd, This bill has no tendency to limit the quantity of influence in the Crown, to render its operation more difficult, or to counteract that operation, which it cannot prevent, in any way whatsoever. It has its full weight, its full range, and its uncontrolled operation on the electors exactly as it had before. 3rd, Nor, thirdly, does it abate the interest or inclination of ministers to apply that influence to the electors; on the contrary, it renders it much more necessary to them, if they seek to have a majority in parliament, to increase the means of that influence, and redouble their diligence, and to sharpen dexterity in the application. The whole effect of the bill is therefore the removing the application of some part of the influence from the elected to the electors, and further to strengthen and extend a court interest already great and powerful in boroughs, here to fix their magazines and places of arms, and thus to make them the principal, not the secondary, theatre of their manœuvres for securing a determined majority in parliament.

I believe nobody will deny that the electors are corruptible. They are men; it is saying nothing worse of them; many of them are but ill informed in their minds, many feeble in their circumstances, easily over-reached, easily seduced. If they are many, the wages of corruption are the lower; and would to God it were not rather a contemptible

and hypocritical adulation than a charitable sentiment to say that there is already no debauchery, no corruption, no bribery, no perjury, no blind fury, and interested faction among the electors in many parts of this kingdom; nor is it surprising, or at all blameable in that class of private men, when they see their neighbours aggrandized, and themselves poor and virtuous without that *eclat* or dignity which attends men in higher situations.

But admit it were true, that the great mass of the electors were too vast an object for court influence to grasp, or extend to, and that in despair they must abandon it; he must be very ignorant of the state of every popular interest who does not know, that in all the corporations, all the open boroughs, indeed in every district of the kingdom, there is some leading man, some agitator, some wealthy merchant, or considerable manufacturer, some active attorney, some popular preacher, some money-lender, &c. &c., who is followed by the whole flock. This is the style of all free countries.

—Multum in Fabiâ valet hic, valet ille Velinâ;
Cuilibet hic fasces dabit eripietque curule.

These spirits, each of which informs and governs his own little orb, are neither so many, nor so little powerful, nor so incorruptible, but that a minister may, as he does frequently, find means of gaining them, and through them all their followers. To establish, therefore, a very general influence among electors will no more be found an impracticable project, than to gain an undue influence over members of parliament. Therefore I am apprehensive, that this bill, though it shifts the place of the disorder, does by no means relieve the constitution. I went through almost every contested election in the beginning of this parliament, and acted as a manager in very many of them; by which, though as at a school of pretty severe and rugged discipline, I came to have some degree of instruction concerning the means by which parliamentary interests are in general procured and supported.

Theory, I know, would suppose, that every general election is to the representative a day of judgment, in which he appears before his constituents to account for the use of the talent with which they intrusted him, and for the improvement he has made of it for the public advantage. I would

be so, if every corruptible representative were to find an enlightened and incorruptible constituent. But the practice and knowledge of the world will not suffer us to be ignorant, that the constitution on paper is one thing, and in fact and experience is another. We must know, that the candidate, instead of trusting at his election to the testimony of his behaviour in parliament, must bring the testimony of a large sum of money, the capacity of liberal expense in entertainments, the power of serving and obliging the rulers of corporations, of winning over the popular leaders of political clubs, associations, and neighbourhoods. It is ten thousand times more necessary to show himself a man of power, than a man of integrity, in almost all the elections with which I have been acquainted. Elections, therefore, become a matter of heavy expense; and, if contests are frequent, to many they will become a matter of an expense totally ruinous, which no fortunes can bear; but least of all the landed fortunes, encumbered as they often, indeed as they mostly, are with debts, with portions, with jointures; and tied up in the hands of the possessor by the limitations of settlement. It is a material, it is in my opinion a lasting, consideration in all the questions concerning election. Let no one think the charges of elections a trivial matter.

The charge, therefore, of elections ought never to be lost sight of in a question concerning their frequency; because the grand object you seek is independence. Independence of mind will ever be more or less influenced by independence of fortune; and if, every three years, the exhausting sluices of entertainments, drinkings, open houses, to say nothing of bribery, are to be periodically drawn up and renewed;—if government-favours, for which now, in some shape or other, the whole race of men are candidates, are to be called for upon every occasion, I see that private fortunes will be washed away, and every, even to the least, trace of independence borne down by the torrent. I do not seriously think this constitution, even to the wrecks of it, could survive five triennial elections. If you are to fight the battle, you must put on the armour of the ministry; you must call in the public, to the aid of private, money. The expense of the last election has been computed (and I am persuaded that it has not been over-rated) at £1,500,000;—three shillings

in the pound more in the land tax. About the close of the last parliament, and the beginning of this, several agents for boroughs went about, and I remember well that it was in every one of their mouths—"Sir, your election will cost you three thousand pounds if you are independent; but if the ministry supports you it may be done for two, and perhaps for less;" and, indeed, the thing spoke itself. Where a living was to be got for one, a commission in the army for another, a lift in the navy for a third, and custom-house offices scattered about without measure or number, who doubts but money may be saved? The treasury may even add money; but indeed it is superfluous. A gentleman of two thousand a year who meets another of the same fortune fights with equal arms; but if to one of the candidates you add a thousand a year in places for himself, and a power of giving away as much among others, one must, or there is no truth in arithmetical demonstration, ruin his adversary, if he is to meet him and to fight with him every third year. It will be said, I do not allow for the operation of character; but I do; and I know it will have its weight in most elections; perhaps it may be decisive in some. But there are few in which it will prevent great expenses.

The destruction of independent fortunes will be the consequence on the part of the candidate. What will be the consequence of triennial corruption, triennial drunkenness, triennial idleness, triennial law-suits, litigations, prosecutions, triennial phrensy, of society dissolved, industry interrupted, ruined; of those personal hatreds that will never be suffered to soften; those animosities and feuds which will be rendered immortal; those quarrels which are never to be appeased; morals vitiated and gangrened to the vitals? I think no stable and useful advantages were ever made by the money got at elections by the voter, but all he gets is doubly lost to the public; it is money given to diminish the general stock of the community, which is in the industry of the subject. I am sure that it is a good while before he or his family settle again to their business. Their heads will never cool; the temptations of elections will be for ever glittering before their eyes. They will all grow politicians; every one, quitting his business, will choose to enrich himself by his vote. They will all take the gauging-rod; new

places will be made for them; they will run to the custom-house quay; their looms and ploughs will be deserted.

So was Rome destroyed by the disorders of continual elections, though those of Rome were sober disorders. They had nothing but faction, bribery, bread, and stage plays, to debauch them. We have the inflammation of liquor superadded, a fury hotter than any of them. There the contest was only between citizen and citizen; here you have the contests of ambitious citizens on one side, supported by the Crown, to oppose to the efforts (let it be so) of private and unsupported ambition on the other. Yet Rome was destroyed by the frequency and charge of elections, and the monstrous expense of an unremitted courtship to the people. I think, therefore, the independent candidate and elector may each be destroyed by it; the whole body of the community be an infinite sufferer; and a vicious ministry the only gainer. Gentlemen, I know, feel the weight of this argument; they agree that this would be the consequence of more frequent elections, if things were to continue as they are. But they think the greatness and frequency of the evil would itself be a remedy for it; that, sitting but for a short time, the member would not find it worth while to make such vast expenses, while the fear of their constituents will hold them the more effectually to their duty.

To this I answer, that experience is full against them. This is no new thing; we have had triennial parliaments; at no period of time were seats more eagerly contested. The expenses of elections ran higher, taking the state of all charges, than they do now. The expense of entertainments was such, that an act, equally severe and ineffectual, was made against it; every monument of the time bears witness of the expense, and most of the acts against corruption in elections were then made; all the writers talked of it and lamented it. Will any one think that a corporation will be contented with a bowl of punch or a piece of beef the less, because elections are every three, instead of every seven, years? Will they change their wine for ale, because they are to get more ale three years hence? Don't think it. Will they make fewer demands for the advantages of patronage in favours and offices, because their member is brought more under their power? We have not only our own his-

torical experience in England upon the subject, but we have the experience co-existing with us in Ireland; where, since their parliament has been shortened, the expense of elections has been so far from being lowered, that it has been very near doubled. Formerly they sat for the king's life; the ordinary charge of a seat in parliament was then £1500. They now sit eight years, four sessions; it is now £2500, and upwards. The spirit of *emulation* has also been extremely increased, and all who are acquainted with the tone of that country have no doubt that the spirit is still growing; that new candidates will take the field; that the contests will be more violent, and the expenses of elections larger than ever.

It never can be otherwise. A seat in this House, for good purposes, for bad purposes, for no purposes at all, (except the mere consideration derived from being concerned in the public counsels,) will ever be a first-rate object of ambition in England. Ambition is no exact calculator. Avarice itself does not calculate strictly, when it games. One thing is certain, that in this political game the great lottery of power is that into which men will purchase with millions of chances against them. In Turkey, where the place, where the fortune, where the head itself, are so insecure, that scarcely any have died in their beds for ages, so that the bow-string is the natural death of bashaws, yet in no country is power and distinction (precarious enough, God knows, in all!) sought for with such boundless avidity, as if the value of place was enhanced by the danger and insecurity of its tenure. Nothing will ever make a seat in this House not an object of desire to numbers by any means or at any charge, but the depriving it of all power and all dignity; this would do it. This is the true and only nostrum for that purpose. But a House of Commons without power and without dignity, either in itself or in its members, is no House of Commons for the purposes of this constitution.

But they will afraid to act ill, if they know that the day of their account is always near. I wish it were true; but it is not; here again we have experience, and experience is against us. The distemper of this age is a poverty of spirit and of genius; it is trifling, it is futile, worse than ignorant, superficially taught; with the politics and morals of girls at

a boarding-school, rather than of men and statesmen; but it is not yet desperately wicked, or so scandalously venal as in former times. Did not a triennial parliament give up the national dignity, approve the peace of Utrecht, and almost give up everything else in taking every step to defeat the Protestant succession? Was not the constitution saved by those who had no election at all to go to, the Lords, because the court applied to electors, and by various means carried them from their true interests; so that the Tory ministry had a majority without an application to a single member? Now as to the conduct of the members, it was then far from pure and independent. Bribery was infinitely more flagrant. A predecessor of yours, Mr. Speaker, put the question of his own expulsion for bribery. Sir William Musgrave was a wise man; a grave man; an independent man; a man of good fortune and good family; however, he carried on while in opposition a traffic, a shameful traffic, with the ministry. Bishop Burnet knew of £6000 which he had received at one payment. I believe the payment of sums in hard money, plain, naked bribery, is rare amongst us. It was then far from uncommon.

A triennial was near ruining, a septennial parliament saved, your constitution; nor perhaps have you ever known a more flourishing period for the union of national prosperity, dignity, and liberty, than the sixty years you have passed under that constitution of parliament.

The shortness of time in which they are to reap the profits of iniquity is far from checking the avidity of corrupt men; it renders them infinitely more ravenous. They rush violently and precipitately on their object; they lose all regard to decorum. The moments of profits are precious; never are men so wicked as during a general mortality. It was so in the great plague at Athens; every symptom of which (and this its worst symptom amongst the rest) is so finely related by a great historian of antiquity. It was so in the plague of London in 1665. It appears in soldiers, sailors, &c. Whoever would contrive to render the life of man much shorter than it is, would, I am satisfied, find the surest receipt for increasing the wickedness of our nature.

Thus, in my opinion, the shortness of a triennial sitting would have the following ill effects; it would make the mem-

ber more shamelessly and shockingly corrupt; it would increase his dependence on those who could best support him at his election; it would rack and tear to pieces the fortunes of those who stood upon their own fortunes and their private interest; it would make the electors infinitely more venal; and it would make the whole body of the people, who are, whether they have votes or not, concerned in elections, more lawless, more idle, more debauched; it would utterly destroy the sobriety, the industry, the integrity, the simplicity of all the people; and undermine, I am much afraid, the deepest and best-laid foundations of the commonwealth.

Those who have spoken and written upon this subject without-doors do not so much deny the probable existence of these inconveniences, in their measure, as they trust for prevention to remedies of various sorts, which they propose. First, a place bill; but if this will not do, as they fear it will not, then they say we will have a rotation, and a certain number of you shall be rendered incapable of being elected for ten years. Then for the electors, they shall ballot; the members of parliament also shall decide by ballot; a fifth project is the change of the present legal representation of the kingdom. On all this I shall observe, that it will be very unsuitable to your wisdom to adopt the project of a bill, to which there are objections insuperable by anything in the bill itself, upon the hope that those objections may be removed by subsequent projects; every one of which is full of difficulties of its own, and which are all of them very essential alterations in the constitution. This seems very irregular and unusual. If anything should make this a very doubtful measure, what can make it more so than that, in the opinion of its advocates, it would aggravate all our old inconveniences in such a manner as to require a total alteration in the constitution of the kingdom? If the remedies are proper in triennial, they will not be less so in septennial, elections; let us try them first; see how the House relishes them; see how they will operate in the nation; and then, having felt your way and prepared against these inconveniences * * *

The honourable gentleman sees that I respect the principle upon which he goes, as well as his intentions and his abilities. He will believe that I do not differ from him wantonly, and on trivial grounds. He is very sure that it was not his

embracing one way, which determined me to take the other. *I* have not, in newspapers, to derogate from his fair fame with the nation, printed the first rude sketch of his bill with ungenerous and invidious comments. *I* have not, in conversations industriously circulated about the town, and talked on the benches of this House, attributed his conduct to motives low and unworthy, and as groundless as they are injurious. *I* do not affect to be frightened with his proposition, as if some hideous spectre had started from hell, which was to be sent back again by every form of exorcism, and every kind of incantation. *I* invoke no Acheron to overwhelm him in the whirlpools of its muddy gulf. *I* do not tell the respectable mover and seconder, by a perversion of their sense and expressions, that their proposition halts between the ridiculous and the dangerous. *I* am not one of those who start up, three at a time, and fall upon and strike at him with so much eagerness, that our daggers hack one another in his sides. My honourable friend has not brought down a spirited imp of chivalry to win the first achievement and blazon of arms on his milk-white shield in a field listed against him; nor brought out the generous offspring of lions, and said to them—Not against that side of the forest, beware of that—here is the prey where you are to fasten your paws; and seasoning his unpractised jaws with blood, tell him—This is the milk for which you are to thirst hereafter. *We* furnish at his expense no holiday, nor suspend hell, that a crafty Ixion may have rest from his wheel; nor give the common adversary, if he be a common adversary, reason to say, I would have put in my word to oppose, but the eagerness of your allies in your social war was such, that I could not break in upon you. I hope he sees and feels, and that every member sees and feels along with him, the difference between amicable dissent and civil discord.

SPEECH

ON A MOTION MADE IN THE HOUSE OF COMMONS, THE 7TH OF MAY 1782, FOR A COMMITTEE TO INQUIRE INTO THE STATE OF THE REPRESENTATION OF THE COMMONS IN PARLIAMENT.

MR. SPEAKER,

We have now discovered, at the close of the eighteenth century, that the constitution of England, which for a series of ages had been the proud distinction of this country, always the admiration, and sometimes the envy, of the wise and learned in every other nation,—we have discovered, that this boasted constitution, in the most boasted part of it, is a gross imposition upon the understanding of mankind, an insult to their feelings, and acting by contrivances destructive to the best and most valuable interests of the people. Our political architects have taken a survey of the fabric of the British constitution. It is singular that they report nothing against the Crown, nothing against the Lords; but in the House of Commons everything is unsound; it is ruinous in every part. It is infested by the dry rot, and ready to tumble about our ears without their immediate help. You know by the faults they find what are their ideas of the alteration. As all government stands upon opinion, they know that the way utterly to destroy it is to remove that opinion, to take away all reverence, all confidence from it; and then, at the first blast of public discontent and popular tumult, it tumbles to the ground.

In considering this question, they who oppose it oppose it on different grounds: one is in the nature of a previous question; that some alterations may be expedient, but that this is not the time for making them. The other is, that no essential alterations are at all wanting; and that neither *now* nor at *any* time is it prudent or safe to be meddling with the fundamental principles, and ancient tried usages, of our constitution—that our representation is as nearly perfect as the necessary imperfection of human affairs and of human creatures will suffer it to be; and that it is a subject of pru-

dent and honest use and thankful enjoyment, and not of captious criticism and rash experiment.

On the other side, there are two parties who proceed on two grounds, in my opinion, as they state them, utterly irreconcilable. The one is juridical, the other political. The one is in the nature of a claim of right, on the supposed rights of man as man; this party desire the decision of a suit. The other ground, as far as I can divine what it directly means, is, that the representation is not so politically framed as to answer the theory of its institution. As to the claim of *right*, the meanest petitioner, the most gross and ignorant, is as good as the best; in some respects his claim is more favourable on account of his ignorance; his weakness, his poverty, and distress, only add to his titles; he sues *in formâ pauperis;* he ought to be a favourite of the court. But when the *other* ground is taken, when the question is political, when a new constitution is to be made on a sound theory of government, then the presumptuous pride of didactic ignorance is to be excluded from the counsel in this high and arduous matter, which often bids defiance to the experience of the wisest. The first claims a personal representation, the latter rejects it with scorn and fervour. The language of the first party is plain and intelligible; they who plead an absolute right cannot be satisfied with anything short of personal representation, because all *natural* rights must be the rights of individuals; as by *nature* there is no such thing as politic or corporate personality; all these ideas are mere fictions of law, they are creatures of voluntary institution; men as men are individuals, and nothing else. They, therefore, who reject the principle of natural and personal representation, are essentially and eternally at variance with those who claim it. As to the first sort of reformers, it is ridiculous to talk to them of the British constitution upon any or upon all of its bases; for they lay it down that every man ought to govern himself, and that where he cannot go himself he must send his representative; that all other government is usurpation; and is so far from having a claim to our obedience, it is not only our right, but our duty, to resist it. Nine-tenths of the reformers argue thus, that is, on the natural right. It is impossible not to make some reflection on the nature of this claim, or avoid a comparison between the extent of the prin-

ciple and the present object of the demand. If this claim be founded, it is clear to what it goes. The House of Commons, in that light, undoubtedly is no representative of the people, as a collection of individuals. Nobody pretends it, nobody can justify such an assertion. When you come to examine into this claim of right, founded on the right of self-government in each individual, you find the thing demanded infinitely short of the principle of the demand. What! one *third* only of the legislature, and of the government no share at all? What sort of treaty of partition is this for those who have an inherent right to the whole? Give them all they ask, and your grant is still a cheat; for how comes only a third to be their younger children's fortune in this settlement? How came they neither to have the choice of kings, or lords, or judges, or generals, or admirals, or bishops, or priests, or ministers, or justices of peace? Why, what have you to answer in favour of the prior rights of the Crown and peerage but this — Our constitution is a prescriptive constitution; it is a constitution whose sole authority is that it has existed time out of mind. It is settled in these *two* portions against one, legislatively; and in the whole of the judicature, the whole of the federal capacity, of the executive, the prudential, and the financial administration, in one alone. Nor was your House of Lords and the prerogatives of the Crown settled on any adjudication in favour of natural rights, for they could never be so partitioned. Your king, your lords, your judges, your juries, grand and little, all are prescriptive; and what proves it is the disputes not yet concluded, and never near becoming so, when any of them first originated. Prescription is the most solid of all titles, not only to property, but, which is to secure that property, to government. They harmonize with each other, and give mutual aid to one another. It is accompanied with another ground of authority in the constitution of the human mind,— presumption. It is a presumption in favour of any settled scheme of government against any untried project, that a nation has long existed and flourished under it. It is a better presumption even of the *choice* of a nation, far better than any sudden and temporary arrangement by actual election. Because a nation is not an idea only of local extent, and individual momentary aggregation; but it is an idea of continuity,

which extends in time as well as in numbers and in space. And this is a choice not of one day, or one set of people, not a tumultuary and giddy choice; it is a deliberate election of ages and of generations; it is a constitution made by what is ten thousand times better than choice, it is made by the peculiar circumstances, occasions, tempers, dispositions, and moral, civil, and social habitudes of the people, which disclose themselves only in a long space of time. It is a vestment, which accommodates itself to the body. Nor is prescription of government formed upon blind, unmeaning prejudices—for man is a most unwise and a most wise being. The individual is foolish; the multitude, for the moment, is foolish, when they act without deliberation; but the species is wise, and, when time is given to it, as a species it always acts right.

The reason for the Crown as it is, for the Lords as they are, is my reason for the Commons as they are, the electors as they are. Now, if the Crown, and the Lords, and the Judicatures, are all prescriptive, so is the House of Commons of the very same origin and of no other. We and our electors have their powers and privileges both made and circumscribed by prescription, as much to the full as the other parts; and as such we have always claimed them, and on no other title The House of Commons is a legislative body corporate by prescription, not made upon any given theory, but existing prescriptively—just like the rest. This prescription has made it essentially what it is,—an aggregate collection of three parts, knights, citizens, burgesses. The question is whether this has been always so, since the House of Commons has taken its present shape and circumstances, and has been an essential operative part of the constitution; which, I take it, it has been for at least five hundred years.

This I resolve to myself in the affirmative: and then another question arises, whether this House stands firm upon its ancient foundations, and is not, by time and accidents, so declined from its perpendicular, as to want the hand of the wise and experienced architects of the day to set it upright again, and to prop and buttress it up for duration;—whether it continues true to the principles upon which it has hitherto stood;—whether this be *de facto* the constitution of the House of Commons, as it has been since the time that the House of Commons has, without dispute, become a necessary

and an efficient part of the British constitution? To ask whether a thing which has always been the same stands to its usual principle, seems to me to be perfectly absurd; for how do you know the principles but from the construction? and if that remains the same, the principles remain the same. It is true, that to say your constitution is what it has been is no sufficient defence for those who say it is a bad constitution. It is an answer to those who say that it is a degenerate constitution. To those who say it is a bad one I answer, look to its effects. In all moral machinery the moral results are its test.

On what grounds do we go to restore our constitution to what it has been at one given period, or to reform and reconstruct it upon principles more conformable to a sound theory of government? A prescriptive government, such as ours, never was the work of any legislator, never was made upon any foregone theory. It seems to me a preposterous way of reasoning, and a perfect confusion of ideas, to take the theories which learned and speculative men have made from that government, and then, supposing it made on those theories, which were made from it, to accuse the government as not corresponding with them. I do not vilify theory and speculation—no, because that would be to vilify reason itself. *Neque decipitur ratio, neque decipit unquam.* No; whenever I speak against theory, I mean always a weak, erroneous, fallacious, unfounded, or imperfect theory; and one of the ways of discovering that it is a false theory is by comparing it with practice. This is the true touchstone of all theories which regard man and the affairs of men—does it suit his nature in general?—does it suit his nature as modified by his habits?

The more frequently this affair is discussed, the stronger the case appears to the sense and the feelings of mankind. I have no more doubt than I entertain of my existence that this very thing, which is stated as a horrible thing, is the means of the preservation of our constitution whilst it lasts; of curing it of many of the disorders which, attending every species of institution, would attend the principle of an exact local representation, or a representation on the principle of numbers. If you reject personal representation, you are pushed upon expedience; and then what they wish

us to do is to prefer their speculations on that subject to the happy experience of this country of a growing liberty and a growing prosperity for five hundred years. Whatever respect I have for their talents, this, for one, I will not do. Then what is the standard of expedience? Expedience is that which is good for the community, and good for every individual in it. Now this expedience is the *desideratum* to be sought either without the experience of means or with that experience. If without, as in case of the fabrication of a new commonwealth, I will hear the learned arguing what promises to be expedient: but if we are to judge of a commonwealth actually existing, the first thing I inquire is, what has been *found* expedient or inexpedient? And I will not take their *promise* rather than the *performance* of the constitution.

* * * But no, this was not the cause of the discontents. I went through most of the northern parts,—the Yorkshire election was then raging; the year before, through most of the western countries—Bath, Bristol, Gloucester;—not one word, either in the towns or country, on the subject of representation; much on the receipt tax, something on Mr. Fox's ambition; much greater apprehension of danger from thence than from want of representation. One would think that the ballast of the ship was shifted with us, and that our constitution had the gunnel under water. But can you fairly and distinctly point out what one evil or grievance has happened which you can refer to the representative not following the opinion of his constituents? What one symptom do we find of this inequality? But it is not an arithmetical inequality with which we ought to trouble ourselves. If there be a moral, a political equality, this is the *desideratum* in our constitution, and in every constitution in the world. Moral inequality is as between places and between classes. Now, I ask, what advantage do you find that the places which abound in representation possess over others, in which it is more scanty, in security for freedom, in security for justice, or in any one of those means of procuring temporal prosperity and eternal happiness, the ends for which society was formed? Are the local interests of Cornwall and Wiltshire, for instance, their roads, canals, their prisons, their police, better than Yorkshire, Warwickshire, or Staffordshire?

Warwick has members; is Warwick, or Stafford, more opulent, happy, or free than Newcastle, or than Birmingham? Is Wiltshire the pampered favourite, whilst Yorkshire, like the child of a bond-woman, is turned out to the desert? This is like the unhappy persons who live, if they can be said to live, in the statical chair; who are ever feeling their pulse, and who do not judge of health by the aptitude of the body to perform its functions, but by their ideas of what ought to be the true balance between the several secretions. Is a committee of Cornwall, &c., thronged, and the others deserted? No. You have an equal representation, because you have men equally interested in the prosperity of the whole who are involved in the general interest and the general sympathy; and, perhaps, these places, furnishing a superfluity of public agents and administrators, (whether in strictness they are representatives or not I do not mean to inquire, but they are agents and administrators,) will stand clearer of local interests, passions, prejudices, and cabals, than the others, and therefore preserve the balance of the parts, and with a more general view, and a more steady hand, than the rest. * * * * *

In every political proposal we must not leave out of the question the political views and object of the proposer; and these we discover, not by what he says, but by the principles he lays down. I mean, says he, a moderate and temperate reform; that is, I mean to do as little good as possible. If the constitution be what you represent it, and there be no danger in the change, you do wrong not to make the reform commensurate to the abuse. Fine reformer indeed! generous donor! What is the cause of this parsimony of the liberty which you dole out to the people? Why all this limitation in giving blessings and benefits to mankind? You admit that there is an extreme in liberty, which may be infinitely noxious to those who are to receive it, and which in the end will leave them no liberty at all. I think so too; they know it, and they feel it. The question is, then, what is the standard of that extreme? What that gentleman, and the associations, or some parts of their phalanxes, think proper? Then our liberties are in their pleasure; it depends on arbitrary will how far I shall be free. I will have none of that freedom. If, therefore, the standard of moderation be

sought for, I will seek for it. Where? Not in their fancies, nor in my own; I will seek for it where I know it is to be found,—in the constitution I actually enjoy. Here it says to an encroaching prerogative,—Your sceptre has its length, you cannot add a hair to your head, or a gem to your crown, but what an eternal law has given to it. Here it says to an overweening peerage,—Your pride finds banks that it cannot overflow: here to a tumultuous and giddy people,—There is a bound to the raging of the sea. Our constitution is like our island, which uses and restrains its subject sea; in vain the waves roar. In that constitution I know, and exultingly I feel, both that I am free and I am not free dangerously to myself or to others. I know that no power on earth, acting as I ought to do, can touch my life, my liberty, or my property. I have that inward and dignified consciousness of my own security and independence which constitutes, and is the only thing which does constitute, the proud and comfortable sentiment of freedom in the human breast. I know too, and I bless God for, my safe mediocrity; I know that if I possessed all the talents of the gentlemen on the side of the House I sit and on the other, I cannot by royal favour, or by popular delusion, or by oligarchical cabal, elevate myself above a certain very limited point, so as to endanger my own fall, or the ruin of my country. I know there is an order that keeps things fast in their place; it is made to us, and we are made to it. Why not ask another wife, other children, another body, another mind?

The great object of most of these reformers is to prepare the destruction of the constitution by disgracing and discrediting the House of Commons. For they think, prudently in my opinion, that if they can persuade the nation that the House of Commons is so constituted as not to secure the public liberty; not to have a proper connexion with the public interests; so constituted as not either actually or virtually to be the representative of the people; it will be easy to prove, that a government composed of a monarchy, an oligarchy chosen by the Crown, and such a House of Commons,—whatever good can be in such a system can by no means be a system of free government.

The constitution of England is never to have a quietus; it is to be continually vilified, attacked, reproached, resisted

Instead of being the hope and sure anchor in all storms, instead of being the means of redress to all grievances, itself is the grand grievance of the nation, our shame instead of our glory. If the only specific plan proposed,—individual personal representation,—is directly rejected by the person who is looked on as the great support of this business, then the only way of considering it is a question of convenience. An honourable gentleman prefers the individual to the present. He therefore himself sees no middle term whatsoever, and therefore prefers of what he sees, the individual; this is the only thing distinct and sensible that has been advocated. He has, then, a scheme, which is the individual representation; he is not at a loss, not inconsistent,—which scheme the other right honourable gentleman reprobates. Now what does this go to, but lead directly to anarchy? For to discredit the only government which he either possesses or can project, what is this but to destroy all government? and this is anarchy. My right honourable friend, in supporting this motion, disgraces his friends and justifies his enemies, in order to blacken the constitution of his country, even of that House of Commons which supported him. There is a difference between a moral or political exposure of a public evil, relative to the administration of government, whether in men or systems, and a declaration of defects, real or supposed, in the fundamental constitution of your country. The first may be cured in the individual by the motives of religion, virtue, honour, fear, shame, or interest. Men may be made to abandon also false systems, by exposing their absurdity or mischievous tendency to their own better thoughts, or to the contempt or indignation of the public; and, after all, if they should exist, and exist uncorrected, they only disgrace individuals as fugitive opinions. But it is quite otherwise with the frame and constitution of the state; if that is disgraced, patriotism is destroyed in its very source. No man has ever willingly obeyed, much less was desirous of defending with his blood, a mischievous and absurd scheme of government. Our first, our dearest, most comprehensive relation, our country, is gone.

It suggests melancholy reflections, in consequence of the strange course we have long held, that we are now no longer quarrelling about the character or about the conduct of men,

or the tenor of measures; but we are grown out of humour with the English constitution itself; this is become the object of the animosity of Englishmen. This constitution in former days used to be the admiration and the envy of the world; it was the pattern for politicians; the theme of the eloquent; the meditation of the philosopher in every part of the world. As to Englishmen, it was their pride, their consolation. By it they lived, for it they were ready to die. Its defects, if it had any, were partly covered by partiality, and partly borne by prudence. Now all its excellencies are forgot, its faults are now forcibly dragged into day, exaggerated by every artifice of representation. It is despised and rejected of men; and every device and invention of ingenuity, or idleness, set up in opposition or in preference to it. It is to this humour, and it is to the measures growing out of it, that I set myself (I hope not alone) in the most determined opposition. Never before did we at any time in this country meet upon the theory of our frame of government, to sit in judgment on the constitution of our country, to call it as a delinquent before us, and to accuse it of every defect and every vice; to see whether it, an object of our veneration, even our adoration, did or did not accord with a pre-conceived scheme in the minds of certain gentlemen. Cast your eyes on the journals of parliament. It is for fear of losing the inestimable treasure we have, that I do not venture to game it out of my hands for the vain hope of improving it. I look with filial reverence on the constitution of my country, and never will cut it in pieces, and put it into the kettle of any magician, in order to boil it, with the puddle of their compounds, into youth and vigour. On the contrary, I will drive away such pretenders; I will nurse its venerable age, and with lenient arts extend a parent's breath.

SPEECH

ON A MOTION, MADE BY THE RIGHT HON. WM. DOWDESWELL, FOR LEAVE TO BRING IN A BILL FOR EXPLAINING THE POWERS OF JURIES IN PROSECUTIONS FOR LIBELS.[1]

I HAVE always understood that a superintendence over the doctrines, as well as the proceedings, of the courts of justice, was a principal object of the constitution of this House; that you were to watch at once over the lawyer and the law; that there should be an orthodox faith as well as proper works; and I have always looked with a degree of reverence and admiration on this mode of superintendence. For, being totally disengaged from the detail of juridical practice, we come something perhaps the better qualified, and certainly much the better disposed, to assert the genuine principle of the laws; in which we can, as a body, have no other than an enlarged and a public interest. We have no common cause of a professional attachment, or professional emulations, to bias our minds; we have no foregone opinions, which from obstinacy and false point of honour we think ourselves at all events obliged to support. So that with our own minds perfectly disengaged from the exercise, we may superintend the execution, of the national justice; which from this circumstance is better secured to the people than in any other country under heaven it can be. As our situation puts us in a proper condition, our power enables us to execute this trust. We may, when we see cause of complaint, administer a remedy; it is in our choice by an address to remove an improper judge, by impeachment before the peers to pursue to destruction a corrupt judge, or by bill to assert, to explain, to enforce, or to reform, the law, just as the occasion and necessity of the case shall guide us. We stand in a situation very honourable to ourselves, and very useful to our country, if we do not abuse or abandon the trust that is placed in us.

[1] This speech was delivered on a motion, made by Mr. Dowdeswell, for leave to bring in a bill to ascertain the power of juries in prosecutions for libels; against which the question of adjournment was carried on the 7th of March, 1771.

The question now before you is upon the power of juries in prosecuting for libels. There are four opinions. 1. That the doctrine as held by the courts is proper and constitutional, and therefore should not be altered. 2. That it is neither proper nor constitutional, but that it will be rendered worse by your interference. 3. That it is wrong, but that the only remedy is a bill of retrospect. 4. The opinion of those who bring in the bill,—that the thing is wrong, but that it is enough to direct the judgment of the court in future.

The bill brought in is for the purpose of asserting and securing a great object in the juridical constitution of this kingdom; which from a long series of practices and opinions in our judges has *in one point*, and in one very essential point, deviated from the true principle.

It is the very ancient privilege of the people of England, that they shall be tried, except in the known exceptions, not by judges appointed by the Crown, but by their own fellow-subjects, the peers of that county court, at which they owe their suit and service; and out of this principle the trial by juries has grown. This principle has not, that I can find, been contested in any case by any authority whatsoever; but there is one case, in which, without directly contesting the principle, the whole substance, energy, and virtue of the privilege is taken out of it; that is, in the case of a trial by indictment or information for a libel. The doctrine in that case, laid down by several judges, amounts to this, that the jury have no competence, where a libel is alleged, except to find the gross corporeal facts of the writing and the publication, together with the identity of the things and persons to which it refers; but that the intent and the tendency of the work, in which intent and tendency the whole criminality consists, is the sole and exclusive province of the judge. Thus having reduced the jury to the cognizance of facts, not in themselves presumptively criminal, but actions neutral and indifferent, the whole matter, in which the subject has any concern or interest, is taken out of the hands of the jury; and if the jury take more upon themselves, what they so take is contrary to their duty; it is no *moral*, but a merely *natural*, power; the same by which they may do any other improper act, the same by which they may even prejudice

themselves with regard to any other part of the issue before them. Such is the matter, as it now stands in possession of your highest criminal courts, handed down to them from very respectable legal ancestors. If this can once be established in this case, the application in principle to other cases will be easy; and the practice will run upon a descent, until the progress of an encroaching jurisdiction (for it is in its nature to encroach, when once it has passed its limits) coming to confine the juries, case after case, to the corporeal fact, and to that alone, and excluding the intention of mind, the only source of merit and demerit, of reward or punishment, juries become a dead letter in the constitution.

For which reason it is high time to take this matter into the consideration of parliament; and for that purpose it will be necessary to examine, first, whether there is anything in the peculiar nature of this crime, that makes it necessary to exclude the jury from considering the intention in it, more than in others. So far from it, that I take it to be much less so from the analogy of other criminal cases, where no such restraint is ordinarily put upon them. The act of homicide is, *primâ facie*, criminal. The intention is afterwards to appear, for the jury to acquit or condemn. In burglary do they insist that the jury have nothing to do but to find the taking of goods, and that if they do, they must necessarily find the party guilty, and leave the rest to the judge: and that they have nothing to do with the word *felonicè* in the indictment?

The next point is to consider it as a question of constitutional policy; that is, whether the decision of the question of libel ought to be left to the judges as a presumption of law, rather than to the jury as matter of popular judgment, as the malice in the case of murder, the felony in the case of stealing. If the intent and tendency are not matters within the province of popular judgment, but legal and technical conclusions, formed upon general principles of law; let us see what they are. Certainly they are most unfavourable, indeed totally adverse, to the constitution of this country.

Here we must have recourse to analogies; for we cannot argue on ruled cases one way or the other. See the history. The old books, deficient in general in Crown cases, furnish us with little on this head. As to the crime, in the very

early Saxon law, I see an offence of this species, called folk-leasing, made a capital offence, but no very precise definition of the crime, and no trial at all: see the statute of 3rd Edward I., cap. 34. The law of libels could not have arrived at a very early period in this country. It is no wonder that we find no vestige of any constitution from authority, or of any deductions from legal science, in our old books and records upon that subject. The statute of *Scandalum Magnatum* is the oldest that I know, and this goes but a little way in this sort of learning. Libelling is not the crime of an illiterate people. When they were thought no mean clerks, who could read and write; when he who could read and write was presumptively a person in holy orders, libels could not be general, or dangerous; and scandals merely *oral* could *spread* little, and must *perish* soon. It is writing, it is printing, more emphatically, that imps calumny with those eagle wings on which, as the poet says, "immortal slanders fly." By the press they spread, they last, they leave the sting in the wound. Printing was not known in England much earlier than the reign of Henry VII., and in the third year of that reign the court of Star Chamber was established. The press and its enemy are nearly coëval. As no positive law against libels existed, they fell under the indefinite class of misdemeanours. For the trial of misdemeanours that court was instituted; their tendency to produce riots and disorders was a main part of the charge, and was laid in order to give the court jurisdiction chiefly against libels. The offence was new. Learning of their own upon the subject they had none; and they were obliged to resort to the only emporium where it was to be had,—the Roman law. After the Star Chamber was abolished in the 10th of Charles I., its authority, indeed, ceased, but its maxims subsisted and survived it. The spirit of the Star Chamber has transmigrated and lived again; and Westminster Hall was obliged to borrow from the Star Chamber, for the same reasons as the Star Chamber had borrowed from the Roman forum, because they had no law, statute, or tradition of their own. Thus the Roman law took possession of our courts; I mean its doctrine, not its sanctions; the severity of capital punishment was omitted, all the rest remained. The grounds of these laws are just and equitable. Undoubtedly the good fame of every man ought to be under

the protection of the laws, as well as his life, and liberty, and property. Good fame is an out-work, that defends them all, and renders them all valuable. The law forbids you to revenge; when it ties up the hands of some it ought to restrain the tongues of others. The good fame of government is the same; it ought not to be traduced. This is necessary in all government; and if opinion be support, what takes away this destroys that support; but the liberty of the press is necessary to this government.

The wisdom, however, of government is of more importance than the laws. I should study the temper of the people before I ventured on actions of this kind. I would consider the whole of the prosecution of a libel of such importance as Junius,—as one piece, as one consistent plan of operations; and I would contrive it so, that if I were defeated I should not be disgraced; that even my victory should not be more ignominious than my defeat; I would so manage, that the lowest in the predicament of guilt should not be the only one in punishment. I would not inform against the mere vender of a collection of pamphlets. I would not put him to trial first, if I could possibly avoid it. I would rather stand the consequences of my first error, than carry it to a judgment that must disgrace my prosecution, or the court. We ought to examine these things in a manner which becomes ourselves, and becomes the object of the inquiry; not to examine into the most important consideration which can come before us, with minds heated with prejudice and filled with passions, with vain popular opinions and humours; and, when we propose to examine into the justice of others, to be unjust ourselves.

An inquiry is wished, as the most effectual way of putting an end to the clamours and libels which are the disorder and disgrace of the times. For people remain quiet, they sleep secure, when they imagine that the vigilant eye of a censorial magistrate watches over all the proceedings of judicature; and that the sacred fire of an eternal, constitutional jealousy, which is the guardian of liberty, law, and justice, is alive night and day, and burning in this House. But when the magistrate gives up his office and his duty, the people assume it, and they inquire too much, and too irreverently, because they think their representatives do not inquire at all.

We have in a libel, 1st, The writing. 2nd, The communi-

cation, called by the lawyers the publication. 3rd, The application to persons and facts. 4th, The intent and tendency. 5th, The matter,—diminution of fame. The law-presumptions on all these are in the communication. No intent can make a defamatory publication good, nothing can make it have a good tendency: truth is not pleadable. Taken *juridically*, the foundation of these law-presumptions is not unjust; taken *constitutionally*, they are ruinous, and tend to the total suppression of all publication. If juries are confined to the fact, no writing which censures, however justly, or however temperately, the conduct of administration can be unpunished. Therefore, if the intent and tendency be left to the judge, as legal conclusions growing from the fact, you may depend upon it you can have no public discussion of a public measure; which is a point which even those who are most offended with the licentiousness of the press (and it is very exorbitant, very provoking) will hardly contend for.

So far as to the first opinion, that the doctrine is right and needs no alteration. 2nd, The next is, that it is wrong, but that we are not in a condition to help it. I admit it is true that there are cases of a nature so delicate and complicated, that an act of parliament on the subject may become a matter of great difficulty. It sometimes cannot define with exactness, because the subject-matter will not bear an exact definition. It may seem to *take away* everything which it does not positively *establish*, and this might be inconvenient; or it may seem, *vice versâ*, to *establish* everything which it does not *expressly take away*. It may be more advisable to leave such matters to the enlightened discretion of a judge, awed by a censorial House of Commons. But then it rests upon those who object to a legislative interposition to prove these inconveniences in the particular case before them. For it would be a most dangerous, as it is a most idle and most groundless, conceit to assume as a general principle that the rights and liberties of the subject are impaired by the care and attention of the legislature to secure them. If so, very ill would the purchase of Magna Charta have merited the deluge of blood which was shed in order to have the body of English privileges defined by a positive written law. This Charter, the inestimable monument of English freedom, so long the boast and glory of this nation, would have been at

once an instrument of our servitude and a monument of our folly, if this principle were true. The thirty-four confirmations would have been only so many repetitions of their absurdity, so many new links in the chain, and so many invalidations of their right.

You cannot open your statute-book without seeing positive provisions relative to every right of the subject. The business of juries is the subject of not fewer than a dozen. To suppose that juries are something innate in the constitution of Great Britain, that they have jumped, like Minerva, out of the head of Jove in complete armour, is a weak fancy supported neither by precedent nor by reason. Whatever is most ancient and venerable in our constitution, royal prerogative, privileges of parliament, rights of elections, authority of courts, juries, must have been modelled according to the occasion. I spare your patience, and I pay a compliment to your understanding, in not attempting to prove that anything so elaborate and artificial as a jury was not the work of *chance*, but a matter of institution brought to its present state by the joint efforts of legislative authority and juridical prudence. It need not be ashamed of being (what in many parts of it at least it is) the offspring of an act of parliament, unless it is a shame for our laws to be the results of our legislature. Juries, which sensitively shrink from the rude touch of parliamentary remedy, have been the subject of not fewer than, I think, forty-three acts of parliament, in which they have been changed with all the authority of a Creator over his creature, from Magna Charta to the great alterations which were made in the 29th of George II.

To talk of this matter in any other way is to turn a rational principle into an idle and vulgar superstition, like the antiquary, Dr. Woodward, who trembled to have his shield scoured, for fear it should be discovered to be no better than an old pot-lid. This species of tenderness to a jury puts me in mind of a gentleman of good condition, who had been reduced to great poverty and distress; application was made to some rich fellows in his neighbourhood to give him some assistance; but they begged to be excused for fear of affronting a person of his high birth; and so the poor gentleman was left to starve out of pure respect to the antiquity of his family. From this principle has arisen an opinion, that I

and current amongst gentlemen, that this distemper ought to be left to cure itself; that the judges having been well exposed, and something terrified on account of these clamours, will entirely change, if not very much relax from their rigour; —if the present race should not change, that the chances of succession may put other more constitutional judges in their place;—lastly, if neither should happen, yet that the spirit of an English jury will always be sufficient for the vindication of its own rights, and will not suffer itself to be overborne by the bench. I confess that I totally dissent from all these opinions. These suppositions become the strongest reasons with me to evince the necessity of some clear and positive settlement of this question of contested jurisdiction. If judges are so full of levity, so full of timidity, if they are influenced by such mean and unworthy passions, that a popular clamour is sufficient to shake the resolution they build upon the solid basis of a legal principle, I would endeavour to fix that mercury by a positive law. If to please an administration the judges can go one way to-day, and to please the crowd they can go another to-morrow; if they will oscillate backward and forward between power and popularity, it is high time to fix the law in such a manner as to resemble, as it ought, the great Author of all law, in whom there is no variableness nor shadow of turning.

As to their succession, I have just the same opinion. I would not leave it to the chances of promotion, or to the characters of lawyers, what the law of the land, what the rights of juries, or what the liberty of the press, should be. My law should not depend upon the fluctuation of the closet, or the complexion of men. Whether a black-haired man or a fair-haired man presided in the court of King's Bench, I would have the law the same; the same whether he was born in *domo regnatrice*, and sucked from his infancy the milk of courts, or was nurtured in the rugged discipline of a popular opposition. This law of court cabal and of party, this *mens quædam nullo perturbata affectu*, this law of complexion, ought not to be endured for a moment in a country whose being depends upon the certainty, clearness, and stability of institutions.

Now I come to the last substitute for the proposed bill, the spirit of juries operating their own jurisdiction. This I

confess I think the worst of all, for the same reasons on which I objected to the others; and for other weighty reasons besides, which are separate and distinct. First, because juries, being taken at random out of a mass of men infinitely large, must be of characters as various as the body they arise from is large in its extent. If the judges differ in their complexions, much more will a jury. A timid jury will give way to an awful judge delivering oracularly the law, and charging them on their oaths, and putting it home to their consciences, to beware of judging where the law had given them no competence. We know that they will do so; they have done so in a hundred instances; a respectable member of your own House, no vulgar man, tells you, that on the authority of a judge he found a man guilty, in whom at the same time he could find no guilt. But, supposing them full of knowledge and full of manly confidence in themselves, how will their knowledge, or their confidence, inform or inspirit others? They give no reason for their verdict, they can but condemn or acquit; and no man can tell the motives on which they have acquitted or condemned. So that this hope of the power of juries to assert their own jurisdiction must be a principle blind, as being without reason, and as changeable as the complexion of men, and the temper of the times.

But after all, is it fit that this dishonourable contention between the court and juries should subsist any longer? On what principle is it, that a jury refuses to be directed by the court as to its *competence*? Whether a libel or no libel be a question of law or of fact may be doubtful, but a question of jurisdiction and competence is certainly a question of law; on this the court ought undoubtedly to judge, and to judge solely and exclusively. If they judge wrong from excusable error, you ought to correct it, as to-day it is proposed, by an explanatory bill; or if by corruption, by bill of *penalties* declaratory, and by punishment. What does a juror say to a judge when he refuses his opinion upon a question of judicature? You are so corrupt, that I should consider myself a partaker of your crime were I to be guided by your opinion; or you are so grossly ignorant, that I, fresh from my hounds, from my plough, my counter, or my loom, am fit to direct you in your own profession. This is an unfitting, it is a dangerous, state of things. The spirit of any sort of men is

not a fit *rule* for deciding on the bounds of their jurisdiction. First, because it is different in different men, and even different in the same at different times; and can never become the proper directing line of law; next, because it is not reason, but feeling; and, when once it is irritated, it is not apt to confine itself within its proper limits. If it becomes, not difference in my opinion upon law, but a trial of spirit between parties, our courts of law are no longer the temple of justice, but the amphitheatre for gladiators. No—God forbid! Juries ought to take their law from the bench only; but it is *our* business that they should hear nothing from the bench but what is agreeable to the principles of the constitution. The jury are to hear the judge, the judge is to hear the law where it speaks plain; where it does not, he is to hear the legislature. As I do not think these opinions of the judges to be agreeable to those principles, I wish to take the only method in which they can or ought to be corrected, by a bill.

Next, my opinion is that it ought to be rather by a bill for removing controversies, than by a bill in the state of manifest and express declaration, and in words *de præterito*. I do this upon reasons of equity and constitutional policy. I do not want to censure the present judges. I think them to be excused for their error. Ignorance is no excuse for a judge; it is changing the nature of his crime; it is not absolving. It must be such error as a wise and conscientious judge may possibly fall into, and must arise from one or both these causes. 1. A plausible principle of law. 2. The precedents of respectable authorities, and in good times. In the first, the principle of law, that the judge is to decide on fact, is an ancient and venerable principle and maxim of the law; and if supported in this application by precedents of good times and of good men, the judge, if wrong, ought to be corrected; he ought not to be reproved, or to be disgraced, or the authority or respect to your tribunals to be impaired. In cases in which declaratory bills have been made where by violence and corruption some fundamental part of the constitution has been struck at; where they would damn the principle, censure the persons, and annul the acts—but where the law has been by the accident of human frailty depraved, or in a particular instance misunderstood; where you neither

mean to rescind the acts nor to censure the persons,—in such cases you have taken the explanatory mode, and, without condemning what is done, you direct the future judgment of the court.

All bills for the reformation of the law must be according to the subject matter, the circumstances, and the occasion, and are of four kinds.—1. Either the law is totally wanting, and then a new enacting statute must be made to supply that want. Or, 2. It is *defective*, then a new law must be made to enforce it. 3. Or it is opposed by power or fraud, and then an act must be made to declare it. 4. Or it is rendered doubtful and controverted, and then a law must be made to explain it. These must be applied according to the exigence of the case: one is just as good as another of them. Miserable indeed would be the resources, poor and unfurnished the stores and magazines of legislation, if we were bound up to a little narrow form, and not able to frame our acts of parliament according to every disposition of our own minds, and to every possible emergency of the commonwealth; to make them declaratory, enforcing, explanatory, repealing, just in what mode or in what degree we please.

Those who think that the judges living and dead are to be condemned; that your tribunals of justice are to be dishonoured; that their acts and judgments on this business are to be rescinded; they will undoubtedly vote against this bill, and for another sort.

I am not of the opinion of those gentlemen who are against disturbing the public repose; I like a clamour whenever there is an abuse. The fire-bell at midnight disturbs your sleep, but it keeps you from being burned in your bed. The hue and cry alarms the country, but it preserves all the property of the province. All these clamours aim at *redress*. But a clamour made merely for the purpose of rendering the people discontented with their situation, without an endeavour to give them a practical remedy, is indeed one of the worst acts of sedition.

I have read and heard much upon the conduct of our courts in the business of libels. I was extremely willing to enter into, and very free to act as facts should turn out upon that inquiry, aiming constantly at remedy as the end of all clamour all debate, all writing, and all inquiry; for which

reason I did embrace, and do now with joy, this method of giving quiet to the courts, jurisdiction to juries, liberty to the press, and satisfaction to the people. I thank my friends for what they have done; I hope the public will one day reap the benefit of their pious and judicious endeavours. They have now sown the seed; I hope they will live to see the flourishing harvest. Their bill is sown in weakness; it will, I trust, be reaped in power. And then, however, we shall have reason to apply to them what my Lord Coke says was an aphorism continually in the mouth of a great sage of the law, "Blessed be not the complaining tongue, but *blessed be the amending hand.*"

LETTER

ON MR. DOWDESWELL'S BILL FOR EXPLAINING THE POWERS OF JURIES IN PROSECUTIONS FOR LIBELS.[1]

An improper and injurious account of the bill brought into the House of Commons by Mr. Dowdeswell has lately appeared in one of the public papers. I am not at all surprised at it, as I am not a stranger to the views and politics of those who have caused it to be inserted.

Mr. Dowdeswell did *not bring in an enacting bill to give to juries*, as the account expresses it, *a power to try law and fact in matter of libel.* Mr. Dowdeswell brought in a bill to put an end to those doubts and controversies upon that subject which have unhappily distracted our courts, to the great detriment of the public, and to the great dishonour of the national justice.

That it is the province of the jury, in informations and indictments for libels, to try nothing more than the fact of the composing, and of the publishing, averments and innuendos, is a doctrine held at present by all the judges of the King's Bench, probably by most of the judges of the kingdom. The same doctrine has been held pretty uniformly since the Revolution; and it prevails more or less with the

[1] The manuscript from which this letter is taken is in Mr. Burke's own hand-writing, but it does not appear to whom it was addressed; nor is there any date affixed to it. It has been thought proper to insert it here as being connected with the subject of the foregoing speech.

jury according to the degree of respect with which they are disposed to receive the opinions of the bench.

This doctrine, which, when it prevails, tends to annihilate the benefit of trial by jury, and when it is rejected by juries tends to weaken and disgrace the authority of the judge, is not a doctrine proper for an English judicature. For the sake both of judge and jury the controversy ought to be quieted, and the law ought to be settled in a manner clear, definitive, and constitutional, by the only authority competent to it,—the authority of the legislature.

Mr. Dowdeswell's bill was brought in for that purpose. It *gives* to the jury no *new* powers; but, after reciting the doubts and controversies, (which nobody denies actually to subsist,) and after stating that if juries are not reputed competent to try the whole matter the benefit of trial by jury will be of none, or imperfect, effect, it enacts, not that the jury *shall* have the *power*, but that they shall be *held and reputed in law and right competent* to try the whole matter laid in the information. The bill is directing to the judges concerning the opinion in law which they are known to hold upon this subject; and does not in the least imply that the jury were to derive a new right and power from that bill, if it should have passed into an Act of Parliament. The implication is directly the contrary; and is as strongly conveyed as it is possible for those to do who state a doubt and controversy, without charging with criminality those persons who so doubted, and so controverted.

Such a style is frequent in acts of this nature; and is that only which is suited to the occasion. An insidious use has been made of the words *enact* and *declare*, as if they were formal and operative words of force to distinguish different species of laws producing different effects. Nothing is more groundless; and I am persuaded no lawyer will stand to such an assertion. The gentlemen who say that a bill ought to have been brought in upon the principle, and in the style, of the petition of right, and declaration of right, ought to consider how far the circumstances are the same in the two cases; and how far they are prepared to go the whole lengths of the reason of those remarkable laws. Mr. Dowdeswell and his friends are of opinion that the circumstances are not the same, and that therefore the bill ought to be the same.

It has been always disagreeable to the persons who compose that connexion to engage wantonly in a paper war, especially with gentlemen for whom they have an esteem, and who seem to agree with them in the great grounds of their public conduct: but they can never consent to purchase any assistance from any persons by the forfeiture of their own reputation. They respect public opinion; and, therefore, whenever they shall be called upon, they are ready to meet their adversaries, as soon as they please, before the tribunal of the public, and there to justify the constitutional nature and tendency, the propriety, the prudence, and the policy of their bill. They are equally ready to explain and to justify all their proceedings in the conduct of it; equally ready to defend their resolution, to make it one object (if ever they should have the power) in a plan of public reformation.

Your correspondent ought to have been satisfied with the assistance which his friends have lent to administration in defeating that bill. He ought not to make a feeble endeavour (I dare say, much to the displeasure of those friends) to disgrace the gentleman who brought it in. A measure, proposed by Mr. Dowdeswell, seconded by Sir George Saville, and supported by their friends, will stand fair with the public, even though it should have been opposed by that list of names (respectable names I admit) which have been printed with so much parade and ostentation in your papers.

It is not true that Mr. Burke spoke in praise of Lord Mansfield. If he had found anything in Lord Mansfield praiseworthy, I fancy he is not disposed to make an apology to anybody for doing justice. Your correspondent's reason for asserting it is visible enough; and it is altogether in the strain of other misrepresentations. That gentleman spoke decently of the judges, and he did no more; most of the gentlemen who debated on both sides held the same language; and nobody will think their zeal the less warm, or the less effectual, because it is not attended with scurrility and virulence.

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LIBEL BILL.

WHEREAS doubts and controversies have arisen at various times concerning the right of jurors to try the whole matter laid in indictments and informations for seditious and other libels: And whereas trial by juries would be of none or imperfect effect if the jurors were not held to be competent to try the whole matter aforesaid; For settling and clearing such doubts and controversies, and for securing to the subject the effectual and complete benefit of trial by juries in such indictments and informations; BE it enacted, &c., That jurors duly empannelled and sworn to try the issue between the king and defendant upon any indictment or information for a seditious libel, or a libel under any other denomination or description, shall be held and reputed competent to all intents and purposes, in law and in right, to try every part of the matter laid or charged in said indictment or information, comprehending the criminal intention of the defendant, and the evil tendency of the libel charged, as well as the mere fact of the publication thereof, and the application by innuendo of blanks, initial letters, pictures, and other devices; any opinion, question, ambiguity, or doubt to the contrary notwithstanding.

SPEECH

ON THE SECOND READING OF A BILL FOR THE REPEAL OF THE MARRIAGE ACT.[1]

THIS act [*the Marriage Act*] stands upon *two* principles; one, that the power of marrying without consent of parents should not take place till twenty-one years of age; the other, that all marriages should be *public*.

The proposition of the honourable mover goes to the first; and undoubtedly his motives are fair and honourable; and even in that measure, by which he would take away paternal power, he is influenced to it by filial piety, and he is led into

[1] This bill was brought into the House of Commons by Mr. Fox, June 1 1781; and rejected, on the second reading, without a division.

it by a natural, and to him inevitable, but real, mistake, that the ordinary race of mankind advance as fast towards maturity of judgment and understanding as he does.

The question is not now whether the law ought to acknowledge and protect such a state of life as minority; nor whether the continuance which is fixed for that state be not improperly prolonged in the law of England. Neither of these in general are questioned. The only question is, whether matrimony is to be taken out of the general rule, and whether the minors of both sexes, without the consent of their parents, ought to have a capacity of contracting the matrimonial, whilst they have not the capacity of contracting any other, engagement. Now it appears to me very clear that they ought not. It is a great mistake to think that mere *animal* propagation is the sole end of matrimony. Matrimony is instituted not only for the propagation of men, but for their nutrition, their education, their establishment; and for the answering of all the purposes of a rational and moral being; and it is not the duty of the community to consider alone of how many, but how useful, citizens it shall be composed.

It is most certain that men are well qualified for propagation long before they are sufficiently qualified even by bodily strength, much less by mental prudence, and by acquired skill in trades and professions, for the maintenance of a family. Therefore, to enable and authorize any man to introduce citizens into the commonwealth before a rational security can be given that he may provide for them, and educate them as citizens ought to be provided for and educated, is totally incongruous with the whole order of society. Nay, it is fundamentally unjust; for a man that breeds a family without competent means of maintenance encumbers other men with his children, and disables them so far from maintaining their own. The improvident marriage of one man becomes a tax upon the orderly and regular marriage of all the rest. Therefore, those laws are wisely constituted that give a man the use of all his faculties at one time; that they may be mutually subservient, aiding and assisting to each other: that the time of his completing his bodily strength, the time of mental discretion, the time of his having learned his trade, and the time at which he

as the disposition of his fortune, should be likewise the time in which he is permitted to introduce citizens into the state, and to charge the community with their maintenance. To give a man a family during his apprenticeship, whilst his very labour belongs to another; to give him a family when you do not give him a fortune to maintain it; to give him a family before he can contract any one of those engagements without which no business can be carried on, would be to burden the state with families without any security for their maintenance. When parents themselves marry their children, they become in some sort security to prevent the ill consequences. You have this security in parental consent; the state takes its security in the knowledge of human nature. Parents ordinarily consider little the passion of their children, and their present gratification. Don't fear the power of a father; it is kind to passion to give it time to cool. But their censures sometimes make me smile; sometimes, for I am very infirm, make me angry; *sæpe bilem, sæpe jocum movent.*

It gives me pain to differ on this occasion from many, if not most, of those whom I honour and esteem. To suffer the grave animadversion and censorial rebuke of the honourable gentleman who made the motion; of him whose good nature and good sense the House look upon with a particular partiality; whose approbation would have been one of the highest objects of my ambition;—this hurts me. It is said, the Marriage Act is aristocratic. I am accused, I am told abroad, of being a man of aristocratic principles. If by aristocracy they mean the Peers, I have no vulgar admiration, nor any vulgar antipathy, towards them; I hold their order in cold and decent respect. I hold them to be of an absolute necessity in the constitution; but I think they are only good when kept within their proper bounds. I trust, whenever there has been a dispute between these Houses, the part I have taken has not been equivocal. If by the aristocracy, which indeed comes nearer to the point, they mean an adherence to the rich and powerful against the poor and weak, this would indeed be a very extraordinary part. I have incurred the odium of gentlemen in this House for not paying sufficient regard to men of ample property. When, indeed, the smallest rights of the poorest people in the kingdom are

in question, I would set my face against any act of pride and power countenanced by the highest that are in it; and if it should come to the last extremity, and to a contest of blood, God forbid! God forbid!—my part is taken; I would take my fate with the poor, and low, and feeble. But if these people came to turn their liberty into a cloak for maliciousness, and to seek a privilege of exemption, not from power, but from the rules of morality and virtuous discipline, then I would join my hand to make them feel the force which a few, united in a good cause, have over a multitude of the profligate and ferocious.

I wish the nature of the ground of repeal were considered with a little attention. It is said the act tends to accumulate, to keep up the power of great families, and to add wealth to wealth. It may be that it does so. It is impossible that any principle of law or government useful to the community should be established without an advantage to those who have the greatest stake in the country. Even some vices arise from it. The same laws which secure property encourage avarice; and the fences made about honest acquisition are the strong bars which secure the hoards of the miser. The dignities of magistracy are encouragements to ambition, with all the black train of villanies which attend that wicked passion. But still we must have laws to secure property; and still we must have ranks and distinctions and magistracy in the state, notwithstanding their manifest tendency to encourage avarice and ambition.

By affirming the parental authority throughout the state, parents in high rank will generally aim at, and will sometimes have, the means, too, of preserving their minor children from any but wealthy or splendid matches. But this authority preserves from a thousand misfortunes which embitter every part of every man's domestic life, and tear to pieces the dearest ties in human society.

I am no peer, nor like to be—but am in middle life, in the mass of citizens; yet I should feel for a son who married a prostituted woman, or a daughter who married a dishonourable and prostituted man, as much as any peer in the realm.

You are afraid of the avaricious principle of fathers. But observe that the avaricious principle is here mitigated very considerably. It is avarice by proxy, it is avarice not work-

ing by itself, or for itself, but through the medium of parental affection, meaning to procure good to its offspring. But the contest is not between love and avarice.

While you would guard against the possible operation of this species of benevolent avarice, the avarice of the father, you let loose another species of avarice, that of the fortune-hunter, unmitigated, unqualified. To show the motives, who has heard of a man running away with a woman not worth sixpence? Do not call this by the name of the sweet and best passion—love. It is robbery; not a jot better than any other.

Would you suffer the sworn enemy of his family, his life, and his honour, possibly the shame, and scandal, and blot of human society, to debauch from care and protection the dearest pledge that he has on earth, the sole comfort of his declining years, almost in infantine imbecility; and with it to carry into the hands of his enemy, and the disgrace of nature, the dear-earned substance of a careful and laborious life? Think of the daughter of an honest, virtuous parent allied to vice and infamy. Think of the hopeful son tied for life by the meretricious arts of the refuse of mercenary and promiscuous lewdness. Have mercy on the youth of both sexes; protect them from their ignorance and inexperience; protect one part of life by the wisdom of another; protect them by the wisdom of laws, and the care of nature.

SPEECH

ON A MOTION FOR LEAVE TO BRING IN A BILL TO QUIET THE POSSESSIONS OF THE SUBJECT AGAINST DORMANT CLAIMS OF THE CHURCH.[1]

If I considered this bill as an attack upon the Church, brought in for the purpose of impoverishing and weakening the clergy, I should be one of the foremost in an early and vigorous opposition to it.

I admit, the same reasons do not press for limiting the

[1] This motion was made the 17th February, 1772, and rejected on a division; the numbers being, Ayes 117, Noes 141.

claims of the Church, that existed for limiting the Crown by that wisest of all laws, which has secured the property, the peace, and the freedom of this country from the most dangerous mode of attack which could be made upon them all.

I am very sensible of the propriety of maintaining that venerable body with decency (and with more than mere decency). I would maintain it according to the ranks wisely established in it with that sober and temperate splendour, that is suitable to a sacred character invested with high dignity.

There ought to be a symmetry between all the parts and orders of a state. A *poor* clergy in an *opulent* nation can have little correspondence with the body it is to instruct, and it is a disgrace to the public sentiments of religion. Such irreligious frugality is even bad economy, as the little that is given is entirely thrown away. Such an impoverished and degraded clergy in quiet times could never execute their duty, and in time of disorder would infinitely aggravate the public confusions.

That the property of the Church is a favoured and privileged property I readily admit. It is made with great wisdom, since a perpetual body with a perpetual duty ought to have a perpetual provision.

The question is not the property of the church, or its security. The question is, whether you will render the principle of prescription a principle of the law of this land, and incorporate it with the whole of your jurisprudence; whether, having given it first against the laity, then against the Crown, you will now extend it to the Church.

The acts which were made, giving limitation against the laity, were not acts against the property of those who might be precluded by limitations. The act of quiet against the Crown was not against the interests of the Crown, but against a power of vexation.

If the principle of prescription be not a constitution of positive law, but a principle of natural equity, then to hold it out against any man is doing him injustice.

That *tithes* are due of common right is readily granted;—and if this principle had been kept in its original straitness, it might indeed be supposed that to plead an exemption was to plead a long-continued *fraud;* and that no man could *be deceived* in such a title; as the moment he bought land he

[illegible] bought land tithed. Prescription could [illegible] prescription can only attach on a supposed [illegible]

[illegible] the principle has been broken in upon. [illegible] necessary to distinguish two sorts of property. [illegible] *mark* on it to distinguish it as ecclesi- [illegible] do, which are a *charge* on land; therefore, [illegible] been made *inalienable*, it ought perhaps to be [illegible] limitation. It might *bonâ fide* be held.

[illegible] it was not originally inalienable; no, not by the [illegible] until the restraining act of the 11th of Elizabeth. [illegible] great revolution of the dissolution of monasteries, [illegible] 31st H. ch. 13, has so mixed and confounded ecclesias- [illegible] with lay property, that a man may by every rule of good [illegible] be possessed of it.

The statute of Queen Elizabeth, ann. 1, ch. 1, gave away the bishops' lands.

So far as to *lands*.

As to tithes, they are not things in their own nature sub- ject to be barred by prescription upon the general principle. But tithes and church lands, by the statutes of Henry VIII. and the 11th Eliz., have become objects *in commercio*; for by coming to the Crown they became grantable in that way to the subject, and [illegible] great part of the church lands passed through the Crown [illegible] the people.

By passing to the [illegible] tithes became property to a mixed [illegible] the king, they became absolutely *lay* [illegible] wall was broken down, and tithes [illegible] became no longer synonymous terms. [illegible] become a fair purchaser of tithes, [illegible] tithes.

[illegible] the lands took the same [illegible] what justice, good policy, and [illegible] became the object [illegible] and of marriage set- [illegible] land in the hands [illegible] So that there was an [illegible] seized of equitably [illegible] which a prescription [illegible] the natural well-

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meaning ignorance of men, and to secure property by the best of all principles,—continuance.

I have therefore shown that a layman may be equitably seized of church lands—2. Of tithes—3. Of exemption from tithes; and you will not contend that there should be no prescription. Will you say that the alienations made before the 11th of Elizabeth shall not stand good?

I do not mean anything against the Church, her dignities, her honours, her privileges, or her possessions. I should wish even to enlarge them all; not that the Church of England is incompetently endowed. This is to take nothing from her but the power of making herself odious. If she be secure herself, she can have no objection to the security of others. For I hope she is secure from lay-bigotry and anti-priestcraft, for certainly such things there are. I heartily wish to see the Church secure in such possessions, as will not only enable her ministers to preach the gospel with ease, but of such a kind as will enable them to preach it with its full effect—so that the pastor shall not have the inauspicious appearance of a tax-gatherer;—such a maintenance as is compatible with the civil prosperity and improvement of their country.

HINTS

FOR AN ESSAY ON THE DRAMA.[1]

It is generally observed that no species of writing is so difficult as the dramatic. It must indeed appear so, were we to consider it upon one side only. It is a dialogue, or species of composition, which in itself requires all the mastery of a complete writer with grace and spirit to support. We may add that it must have a fable too, which necessarily requires invention, one of the rarest qualities of the human mind. It would surprise us, if we were to examine the thing critically, how few good original stories there are in the world. The most celebrated borrow from each other, and are content

[1] These hints appear to have been first thoughts, which were probably intended to be amplified and connected; and so worked up into a regular dissertation. No date appears of the time when they were written, but it was probably before the year 1765.

with some new turn; some corrective, addition, or establishment. Many of the most celebrated writers in that way can claim no other merit. I do not think La Fontaine has one original story. And if we pursue him to those who are his originals, the Italian writers of tales and novels, we shall find most even of them drawing from antiquity, or borrowing from the Eastern world, or adopting and decorating the little popular stories they found current and traditionary in their country. Sometimes they laid the foundation of their tale in real fact. Even after all their borrowing from so many funds, they are still far from opulent. How few stories has Boccace which are tolerable, and how much fewer are there which you would desire to read twice! But this general difficulty is greatly increased when we come to the drama. Here a fable is essential; a fable, which is to be conducted with rapidity, clearness, consistency, and surprise, without any, or certainly with very little, aid from narrative. This is the reason that generally nothing is more dull in telling than the plot of a play. It is seldom or never a good story in itself; and in this particular, some of the greatest writers, both in ancient and modern theatres, have failed in the most miserable manner. It is well a play has still so many requisites to complete it, that, though the writer should not succeed in these particulars, and therefore should be so far from perfection, there are still enough left, in which he may please, at less expense of labour to himself, and perhaps, too, with more real advantage to his auditory. It is indeed very difficult happily to excite the passions, and draw the characters of men. But our nature leads us more directly to such paintings than to the invention of a story; we are imitative animals; and we are more naturally led to imitate the exertions of character and passion, than to observe and describe a series of events, and to discover those relations and dependencies in them, which will please. Nothing can be more rare than this quality. Herein, as I believe, consists the difference between the inventive and the descriptive genius. By the inventive genius, I mean the creator of agreeable facts and incidents; by the descriptive, the delineator of characters, manners, and passions. Imitation calls us to this; we are in some cases almost forced to it, and it is comparatively easy. More observe the characters of men than the order of

things; to the one we are formed by nature, and by that sympathy from which we are so strongly led to take a part in the passions and manners of our fellow-men. The other is, as it were, foreign and extrinsical. Neither, indeed, can anything be done, even in this, without invention. But it is obvious that this invention is of a kind altogether different from the former. However, though the more sublime genius, and the greatest art, is required for the former, yet the latter, as it is more common and more easy, so it is more useful, and administers more directly to the great business of life.

If the drama requires such a combination of talents, the most common of which is very rarely to be found, and difficult to be exerted, it is not surprising, at a time when almost all kinds of poetry are cultivated with little success, to find that we have done no great matters in this. Many causes may be assigned for our present weakness in that oldest and most excellent branch of philosophy, poetical learning, and particularly in what regards the theatre. I shall here only consider what appears to me to be one of these causes; I mean the wrong notion of the art itself, which begins to grow fashionable, especially among people of an elegant turn of mind with a weak understanding; and these are they, that form the great body of the idle part of every polite and civilized nation. The prevailing system of that class of mankind is indolence. This gives them an aversion to all strong movements. It infuses a delicacy of sentiment, which, when it is real, and accompanied with a justness of thought, is an amiable quality, and favourable to the fine arts; but when it comes to make the whole of the character, it injures things more excellent than those which it improves; and degenerates into a false refinement, which diffuses a languor, and breathes a frivolous air over everything which it can influence. * * * * * * * *

Having differed in my opinion about dramatic composition, and particularly in regard to comedy, with a gentleman for whose character and talents I have a very high respect, I thought myself obliged, on account of that difference, to a new and more exact examination of the grounds upon which I had formed my opinions. I thought it would be impossible to come to any clear and definite idea on this subject, without remounting to the natural passions or dispositions of

men, which first gave rise to this species of writing; for from these alone its nature, its limits, and its true character, can be determined.

There are but four general principles which can move men to interest themselves in the characters of others; and they may be classed under the heads of good and ill opinion; on the side of the first may be classed admiration and love, hatred and contempt on the other. And these have accordingly divided poetry into two very different kinds, the panegyrical and the satirical; under one of which heads all genuine poetry falls (for I do not reckon the didactic as poetry in the strictness of speech).

Without question, the subject of all poetry was originally direct and personal. Fictitious character is a refinement, and comparatively modern; for abstraction is in its nature slow, and always follows the progress of philosophy. Men had always friends and enemies before they knew the exact nature of vice and virtue; they naturally, and with their best powers of eloquence, whether in prose or verse, magnified and set off the one, vilified and traduced the other.

The first species of composition in either way was probably some general indefinite topic of praise or blame, expressed in a song or hymn, which is the most common and simple kind of panegyric and satire.

But as nothing tended to set their hero or subject in a more forcible light than some story to their advantage or prejudice, they soon introduced a narrative; and thus improved the composition into a greater variety of pleasure to the hearer, and to a more forcible instrument of honour or disgrace to the subject.

It is natural with men, when they relate any action with any degree of warmth, to represent the parties to it talking as the occasion requires; and this produces that mixed species of poetry composed of narrative and dialogue, which is very universal in all languages, and of which Homer is the noblest example in any. This mixed kind of poetry seems also to be most perfect, as it takes in a variety of situations, circumstances, reflections, and descriptions, which must be rejected on a more limited plan.

It must be equally obvious that men in relating a story in a forcible manner do very frequently mimic the looks, gesture,

and voice of the person concerned, and for the time, as it were, put themselves into his place.

This gave the hint to the drama, or acting, and observing the powerful effect of this in public exhibitions * * *

But the drama, the most artificial and complicated of all the poetical machines, was not yet brought to perfection: and like those animals which change their state, some parts of the old narrative still adhered. It still had a chorus, it still had a prologue to explain the design; and the perfect drama, an automaton supported and moved without any foreign help, was formed late and gradually. Nay, there are still several parts of the world in which it is not, and probably never may be, formed.—The Chinese drama.

The drama, being at length formed, naturally adhered to the first division of poetry, the satirical and panegyrical, which made tragedy and comedy.

Men, in praising, naturally applaud the dead. Tragedy celebrated the dead.

Great men are never sufficiently shown but in struggles. Tragedy turned therefore on melancholy and affecting subjects;—a sort of Threnodia;—its passions, therefore, admiration, terror, and pity.

Comedy was satirical. Satire is best on the living.

It was soon found, that the best way to depress a hated character was to turn it into ridicule; and therefore the greater vices, which in the beginning were lashed, gave place to the *contemptible*.

Its passion therefore became ridicule.

Every writing must have its characteristic passion. What is that of comedy, if not ridicule?

Comedy, therefore, is a satirical poem, representing an action carried on by dialogue, to excite laughter by describing ludicrous characters. See Aristotle.

Therefore, to preserve this definition, the ridicule must be either in the action or characters, or both.

An action may be ludicrous, independent of the characters, by the ridiculous situations and accidents which may happen to the characters.

But the action is not so important as the characters. We see this every day upon the stage.

What are the characters fit for comedy?

It appears that no part of human life, which may be subject to ridicule, is exempted from comedy; for whenever men run into the absurd, whether high or low, they may be the subject of satire, and consequently of comedy. Indeed some characters, as kings, are exempted through decency; others might be too insignificant. Some are of opinion, that persons in better life are so polished that their true characters, and the real bent of their humour, cannot appear. For my own part I cannot give entire credit to this remark; for, in the first place, I believe that good breeding is not so universal or strong, in any part of life, as to overrule the real characters and strong passions of such men as would be proper objects of the drama. 2dly, It is not the ordinary common-place discourse of assemblies that is to be represented in comedy. The parties are to be put in situations in which their passions are roused, and their real characters called forth; and if their situations are judiciously adapted to their characters, there is no doubt but they will appear in all their force, choose what situation of life you please. Let the politest man alive game, and feel at loss; let this be his character; and his politeness will never hide it, nay, it will put it forward with greater violence, and make a more forcible contrast.

Sic in MS. to.

But genteel comedy puts these characters, not in their passionate, but in their genteel, light; makes elegant cold conversation, and virtuous personages. Such sort of pictures disagreeable.

Sic in MS. to.

Virtue and politeness not proper for comedy, for they have too much or no movement.

They are not good in tragedy, much less here.

The greater virtues, fortitude, justice, and the like, too serious and sublime.

It is not every story, every character, every incident, but those only which answer their end.—Painting of artificial things not good; a thing being useful does not therefore make it most pleasing in picture.—Natural manners good and bad —sentiment.—In common affairs and common life virtuous sentiments are not even the character of virtuous men; we cannot bear these sentiments but when they are pressed out as it were by great exigencies, and a certain contention, which is above the general style of comedy. * * * *

The first character of propriety the Law-Suit possesses in

an eminent degree. The plot of the play is an iniquitous suit; there can be no fitter persons to be concerned in the active part of it than low, necessitous lawyers of bad character and profligates of desperate fortune. On the other hand, in the passive part, if an honest and virtuous man had been made the object of their designs, or a weak man of good intentions, every successful step they should take against him ought rather to fill the audience with horror than pleasure and mirth; and if in the conclusion their plots should be baffled, even this would come too late to prevent that ill impression; but in the Law-Suit this is admirably avoided; for the character chosen is a rich, avaricious usurer. The pecuniary distresses of such a person can never be looked upon with horror; and if he should be even handled unjustly, we always wait his delivery with patience.

Now, with regard to the display of the character, which is the essential part of the plot, nothing can be more finely imagined than to draw a miser in law. If you draw him inclined to love, and marriage, you depart from the height of his character in some measure, as Moliere has done. Expenses of this kind he may easily avoid. If you draw him in law, to advance brings expense; to draw back brings expense; and the character is tortured and brought out at every moment.

A sort of notion has prevailed, that a comedy might subsist without humour. It is an idle disquisition, whether a story in private life, represented in dialogues, may not be carried on with some degree of merit without humour. It may, unquestionably; but what shines chiefly in comedy, the painting the manners of life, must be in a great measure wanting. A character, which has nothing extravagant, wrong, or singular in it, can affect but very little; and this is what makes Aristotle draw the great line of distinction between tragedy and comedy. Ἐν αὐτῇ δὲ τῇ διαφορᾷ καὶ ἡ τραγῳδία, &c. Arist. Poet. ch. 11.

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There is not a more absurd mistake, than that whatever may not unnaturally happen in an action is of course to be admitted into every painting of it. In nature, the great and the little, the serious and the ludicrous, things the most disproportionate the one to the other, are frequently huddled together in much confusion. And what then? It is the

business of art first to choose some determinate end and purpose, and then to select those parts of nature, and those only, which conduce to that end, avoiding, with most religious exactness, the intermixture of anything which would contradict it. Else the whole idea of propriety, that is, the only distinction between the just and chimerical, in the arts would be utterly lost. A hero eats, drinks, and sleeps like other men; but to introduce such scenes on the stage, because they are natural, would be ridiculous. And why? because they have nothing to do with the end for which the play is written. The design of a piece might be utterly destroyed by the most natural incidents in the world. Boileau has somewhere criticised, with what surely is a very just severity, on Ariosto, for introducing a ludicrous tale from his host to one of the principal persons of his poem, though the story has great merit in its way. Indeed that famous piece is so monstrous and extravagant in all its parts, that one is not particularly shocked with this indecorum. But, as Boileau has observed, if Virgil had introduced Æneas listening to a bawdy story from his host, what an episode had this formed in that divine poem! Suppose, instead of Æneas, he had represented the impious Mezentius as entertaining himself in that manner, such a thing would not have been without probability, but it would have clashed with the very first principles of taste, and, I would say, of common sense.

I have heard of a celebrated picture of the Last Supper; and, if I do not mistake, it is said to be the work of some of the Flemish masters; in this picture all the personages are drawn in a manner suitable to the solemnity of the occasion; but the painter has filled the void under the table with a dog gnawing bones. Who does not see the possibility of such an incident, and at the same time the absurdity of introducing it on such an occasion? Innumerable such cases might be stated; it is not the incompatibility or agreeableness of incidents, characters, or sentiments with the probable in fact, but with propriety in design, that admits or excludes them from a place in any composition. We may as well urge, that stones, sand, clay, and metals lie in a certain manner in the earth, as a reason for building with these materials, and in that manner, as for writing according to the accidental disposition of characters in nature. I have, I am afraid, been

longer than it might seem necessary in refuting such a notion; but such authority can only be opposed by a good deal of reason.

We are not to forget, that a play is, or ought to be, a very short composition; that if one passion or disposition is to be wrought up with tolerable success, I believe it is as much as can in any reason be expected. If there be scenes of distress, and scenes of humour, they must either be in a double or single plot. If there be a double plot, there are in fact two. If they be in checkered scenes of serious and comic, you are obliged continually to break both the thread of the story and the continuity of the passion; if in the same scene, as Mrs. V. seems to recommend, it is needless to observe how absurd the mixture must be, and how little adapted to answer the genuine end of any passion. It is odd to observe the progress of bad taste; for this mixed passion being universally proscribed in the regions of tragedy, it has taken refuge and shelter in comedy, where it seems firmly established, though no reason can be assigned why we may not laugh in the one as well as weep in the other. The true reason of this mixture is to be sought for in the manners which are prevalent amongst a people; it has become very fashionable to affect delicacy, tenderness of heart, and fine feeling, and to shun all imputation of rusticity. Much mirth is very foreign to this character; they have introduced therefore a sort of neutral writing.

Now as to characters, they have dealt in them as in the passions. There are none but lords and footmen. One objection to characters in high life is, that almost all wants, and a thousand happy circumstances arising from them, being removed from it, their whole mode of life is too artificial, and not so fit for painting. And the contrary opinion has arisen from a mistake, that whatever has merit in the reality necessarily must have it in the representation. I have observed that persons, and especially women, in lower life, and of no breeding, are fond of such representations. It seems like introducing them into good company, and the honour compensates the dulness of the entertainment.

Fashionable manners being fluctuating is another reason for not choosing them—sensible comedy—talking sense a dull thing— * * * * * * * * *

AN ESSAY

TOWARDS

AN ABRIDGMENT OF THE ENGLISH HISTORY.

IN THREE BOOKS.

BOOK I.—CHAPTER I.

CAUSES OF THE CONNEXION BETWEEN THE ROMANS AND BRITONS.—CÆSAR'S TWO INVASIONS OF BRITAIN.

In order to obtain a clear notion of the state of Europe before the universal prevalence of the Roman power, the whole region is to be divided into two principal parts, which we shall call northern and southern Europe. The northern part is everywhere separated from the southern by immense and continued chains of mountains. From Greece it is divided by Mount Hæmus; from Spain by the Pyrenees; from Italy by the Alps. This division is not made by an arbitrary or casual distribution of countries. The limits are marked out by nature, and in these early ages were yet further distinguished by a considerable difference in the manners and usages of the nations they divided. If we turn our eyes to the northward of these boundaries, a vast mass of solid continent lies before us, stretched out from the remotest shore of Tartary quite to the Atlantic ocean. A line drawn through this extent from east to west would pass over the greatest body of unbroken land that is anywhere known upon the globe. This tract, in a course of some degrees to the northward, is not interrupted by any sea; neither are the mountains so disposed as to form any considerable obstacle to hostile incursions. Originally it was all inhabited but by one sort of people, known by one common denomination of Scythians. As the several tribes of this comprehensive name lay in many parts greatly exposed, and as by their situation and customs they were much inclined to attack, and by both

ill qualified for defence, throughout the whole of that immense region there was for many ages a perpetual flux and reflux of barbarous nations. None of their commonwealths continued long enough established on any particular spot to settle, and to subside into a regular order; one tribe continually overpowering or thrusting out another. But as these were only the mixtures of Scythians with Scythians, the triumphs of barbarians over barbarians, there were revolutions in empire, but none in manners. The northern Europe, until some parts of it were subdued by the progress of the Roman arms, remained almost equally covered with all the ruggedness of primitive barbarism.

The southern part was differently circumstanced. Divided, as we have said, from the northern by great mountains, it is further divided within itself by considerable seas. Spain, Greece, and Italy are peninsulas. By these advantages of situation the inhabitants were preserved from those great and sudden revolutions to which the northern world had been always liable. And being confined within a space comparatively narrow, they were restrained from wandering into a pastoral and unsettled life. It was upon one side only that they could be invaded by land. Whoever made an attempt on any other part must necessarily have arrived in ships of some magnitude; and must therefore have, in a degree, been cultivated, if not by the liberal, at least by the mechanic arts. In fact the principal colonies which we find these countries to have received were sent from Phœnicia, or the Lesser Asia, or Egypt, the great fountains of the ancient civility and learning. And they became, more or less, earlier or later, polished, as they were situated nearer to, or further from, these celebrated sources. Though I am satisfied, from a comparison of the Celtic tongues with the Greek and Roman, that the original inhabitants of Italy and Greece were of the same race with the people of northern Europe, yet it is certain they profited so much by their guarded situation, by the mildness of their climate favourable to humanity, and by the foreign infusions, that they came greatly to excel the northern nations in every respect, and particularly in the art and discipline of war. For not being so strong in their bodies, partly from the temperature of their climate, partly from a degree of softness induced by a more cultivated life, they applied them-

selves to remove the few inconveniences of a settled society by the advantages which it affords in art, disposition, and obedience. And as they consisted of many small states, their people were well exercised in arms and sharpened against each other by continual war.

Such was the situation of Greece and Italy from a very remote period. The Gauls and other northern nations, envious of their wealth, and despising the effeminacy of their manners, often invaded them with numerous, though ill-formed, armies. But their greatest and most frequent attempts were against Italy; their connexion with which country alone we shall here consider. In the course of these wars the superiority of the Roman discipline over the Gallic ferocity was at length demonstrated. The Gauls, notwithstanding the numbers with which their irruptions were made, and the impetuous courage by which that nation was distinguished, had no permanent success. They were altogether unskilful either in improving their victories or repairing their defeats. But the Romans, being governed by a most wise order of men, perfected by a traditionary experience in the policy of conquest, drew some advantage from every turn of fortune; and, victorious or vanquished, persisted in one uniform and comprehensive plan of breaking to pieces everything which endangered their safety, or obstructed their greatness. For after having more than once expelled the northern invaders out of Italy, they pursued them over the Alps; and, carrying the war into the country of their enemy, under several able generals, and at last under Caius Cæsar, they reduced all the Gauls from the Mediterranean Sea to the Rhine and the ocean. During the progress of this decisive war, some of the maritime nations of Gaul had recourse for assistance to the neighbouring island of Britain. From thence they received considerable succours; by which means this island first came to be known with any exactness by the Romans; and first drew upon it the attention of that victorious people.

Though Cæsar had reduced Gaul, he perceived clearly that a great deal was still wanting to make his conquest secure and lasting. That extensive country, inhabited by a multitude of populous and fierce nations, had been rather overrun than conquered. The Gauls were not yet broken to the yoke, which they bore with murmuring and discontent.

The ruins of their own strength were still considerable; and they had hopes that the Germans, famous for their invincible courage and their ardent love of liberty, would be at hand powerfully to second any endeavours for the recovery of their freedom; they trusted that the Britons of their own blood, allied in manners and religion, and whose help they had lately experienced, would not then be wanting to the same cause. Cæsar was not ignorant of these dispositions. He therefore judged, that, if he could confine the attention of the Germans and Britons to their own defence, so that the Gauls, on which side soever they turned, should meet nothing but the Roman arms, they must soon be deprived of all hope, and compelled to seek their safety in an entire submission.

These were the public reasons which made the invasion of Britain and Germany an undertaking, at that particular time, not unworthy a wise and able general. But these enterprises, though reasonable in themselves, were only subservient to purposes of more importance, and which he had more at heart. Whatever measures he thought proper to pursue on the side of Germany, or on that of Britain, it was towards Rome that he always looked, and to the furtherance of his interest there that all his motions were really directed. That republic had receded from many of those maxims by which her freedom had been hitherto preserved under the weight of so vast an empire. Rome now contained many citizens of immense wealth, eloquence, and ability. Particular men were more considered than the republic; and the fortune and genius of the Roman people, which formerly had been thought equal to everything, came now to be less relied upon than the abilities of a few popular men. The war with the Gauls, as the old and most dangerous enemy of Rome, was of the last importance; and Cæsar had the address to obtain the conduct of it for a term of years, contrary to one of the most established principles of their government. But this war was finished before that term was expired, and before the designs which he entertained against the liberty of his country were fully ripened. It was, therefore, necessary to find some pretext for keeping his army on foot; it was necessary to employ them in some enterprise, that might at once raise his character, keep his interest alive at Rome, en-

... his troops, and by that means weaken the ties ... them to their country.

... this motive, coloured by reasons plausible and fit to ... served, he resolved in one and the same year, and even ... that was almost expired, upon two expeditions; the ... of which lay at a great distance from each other, and ... as yet untouched by the Roman arms. And first he ... resolved to pass the Rhine and penetrate into Germany.

Cæsar spent but twenty-eight days in his German expedition. In ten he built his admirable bridge across the Rhine. In eighteen he performed all he proposed by entering that country. When the Germans saw the barrier of their river so easily overcome, and nature herself, as it were, submitted to the yoke, they were struck with astonishment; and never after ventured to oppose the Romans in the field. The most obnoxious of the German countries were ravaged; the strong awed; the weak taken into protection. Thus an alliance being formed, always the first step of the Roman policy, and not only a pretence, but a means, being thereby acquired of entering the country upon any future occasion, he marched back through Gaul to execute a design of much the same nature and extent in Britain.

The inhabitants of that island, who were divided into a great number of petty nations, under a very coarse and disorderly frame of government, did not find it easy to plan any effectual measures for their defence. In order, however, to gain time in this exigency, they sent ambassadors to Cæsar with terms of submission. Cæsar could not colourably reject their offers. But as their submission rather clashed than coincided with his real designs, he still persisted in his resolution of passing over into Britain; and accordingly embarked with the infantry of two legions at the port of Itium.[1] His landing was obstinately disputed by the natives, and brought on a very hot and doubtful engagement. But the superior dispositions of so accomplished a commander, the resources of the Roman discipline, and the effect of the military engines on the unpractised minds of a barbarous people, prevailed at length over the best resistance which could be made by rude numbers and mere bravery.

Ante Ch. 55.

[1] Some think this port to be Witsand, others Boulogne.

The place where the Romans first entered this island was somewhere near Deal; and the time fifty-five years before the birth of Christ.

The Britons, who defended their country with so much resolution in the engagement, immediately after it lost all their spirit. They had laid no regular plan for their defence. Upon their first failure they seemed to have no resources left. On the slightest loss they betook themselves to treaty and submission; upon the least appearance in their favour they were as ready to resume their arms, without any regard to their former engagements;—a conduct which demonstrates that our British ancestors had no regular polity with a standing coercive power. The ambassadors which they sent to Cæsar laid all the blame of a war, carried on by great armies, upon the rashness of their young men; and they declared that the ruling people had no share in these hostilities. This is exactly the excuse which the savages of America, who have no regular government, make at this day upon the like occasions; but it would be a strange apology from one of the modern states of Europe, that had employed armies against another. Cæsar reprimanded them for the inconstancy of their behaviour; and ordered them to bring hostages to secure their fidelity, together with provisions for his army. But whilst the Britons were engaged in the treaty, and on that account had free access to the Roman camp, they easily observed that the army of the invaders was neither numerous nor well provided; and having about the same time received intelligence that the Roman fleet had suffered in a storm, they again changed their measures, and came to a resolution of renewing the war. Some prosperous actions against the Roman foraging parties inspired them with great confidence. They were betrayed by their success into a general action in the open field. Here the disciplined troops obtained an easy and complete victory; and the Britons were taught the error of their conduct at the expense of a terrible slaughter.

Twice defeated, they had recourse once more to submission. Cæsar, who found the winter approaching, provisions scarce, and his fleet not fit to contend with that rough and tempestuous sea in a winter voyage, hearkened to their proposals,

exacting double the number of the former hostages. He then set sail with his whole army.

In this first expedition into Britain, Cæsar did not make, nor indeed could he expect, any considerable advantage. He acquired a knowledge of the sea-coast, and of the country contiguous to it; and he became acquainted with the force, the manner of fighting, and the military character of the people. To compass these purposes he did not think a part of the summer ill bestowed. But early in the next he prepared to make a more effective use of the experience he had gained. He embarked again at the same port, but with a more numerous army. The Britons on their part had prepared more regularly for their defence in this than the former year. Several of those states which were nearest and most exposed to the danger had, during Cæsar's absence, combined for their common safety, and chosen Cassibelan, a chief of power and reputation, for the leader of their union. They seemed resolved to dispute the landing of the Romans with their former intrepidity. But when they beheld the sea covered as far as the eye could reach with the multitude of the enemy's ships, (for they were eight hundred sail,) they despaired of defending the coast; they retired into the woods and fastnesses; and Cæsar landed his army without opposition.

The Britons now saw the necessity of altering their former method of war. They no longer therefore opposed the Romans in the open field; they formed frequent ambuscades; they divided themselves into light flying parties; and continually harassed the enemy on his march. This plan, though in their circumstances the most judicious, was attended with no great success. Cæsar forced some of their strongest intrenchments; and then carried the war directly into the territories of Cassibelan.

The only fordable passage which he could find over the Thames was defended by a row of palisadoes, which lined the opposite bank; another row of sharpened stakes stood under water along the middle of the stream. Some remains of these works long subsisted; and were to be discerned in the river[1] down almost to the present times. The Britons had made

[1] Coway stakes, near Kingston on Thames.

the best of the situation; but the Romans plunged into the water, tore away the stakes and palisadoes, and obtained a complete victory. The capital, or rather chief fastness, of Cassibelan was then taken, with a number of cattle, the wealth of this barbarous city. After these misfortunes the Britons were no longer in a condition to act with effect. Their ill success in the field soon dissolved the ill-cemented union of their councils. They split into factions, and some of them chose the common enemy for their protector. Insomuch that, after some feeble and desultory efforts, most of the tribes to the southward of the Thames submitted themselves to the conqueror. Cassibelan, worsted in so many encounters, and deserted by his allies, was driven at length to sue for peace. A tribute was imposed. And as the summer began to wear away, Cæsar, having finished the war to his satisfaction, embarked for Gaul.

The whole of Cæsar's conduct in these two campaigns sufficiently demonstrates that he had no intention of making an absolute conquest of any part of Britain. Is it to be believed, that, if he had formed such a design, he would have left Britain without an army, without a legion, without a single cohort, to secure his conquest; and that he should sit down contented with an empty glory, and the tribute of an indigent people, without any proper means of securing a continuance of that small acquisition? This is not credible. But his conduct here, as well as in Germany, discovers his purpose in both expeditions; for by them he confirmed the Roman dominion in Gaul: he gained time to mature his designs, and he afforded his party in Rome an opportunity of promoting his interest, and exaggerating his exploits, which they did in such a manner as to draw from the senate a decree for a very remarkable acknowledgment of his services, in a supplication or thanksgiving of twenty days. This attempt, not being pursued, stands single, and has little or no connexion with the subsequent events.

Therefore I shall in this place, where the narrative will be the least broken, insert from the best authorities which are left, and the best conjectures which, in so obscure a matter, I am able to form, some account of the first peopling of this island; the manners of its inhabitants; their art of war; their religious and civil discipline. These are matters not only

worthy of attention, as containing a very remarkable piece of antiquity; but as not wholly unnecessary towards comprehending the great change made in all these points, when the Roman conquest came afterwards to be completed.

CHAPTER II.

SOME ACCOUNT OF THE ANCIENT INHABITANTS OF BRITAIN.

THAT Britain was first peopled from Gaul we are assured by the best proofs; proximity of situation, and resemblance in language and manners. Of the time in which this event happened we must be contented to remain in ignorance, for we have no monuments. But we may conclude that it was a very ancient settlement, since the Carthaginians found this island inhabited when they traded hither for tin; as the Phœnicians, whose tracks they followed in this commerce, are said to have done long before them. It is true that when we consider the short interval between the universal deluge and that period, and compare it with the first settlement of men at such a distance from this corner of the world, it may seem not easy to reconcile such a claim to antiquity with the only authentic account we have of the origin and progress of mankind; especially as in those early ages the whole face of nature was extremely rude and uncultivated; when the links of commerce, even in the countries first settled, were few and weak; navigation imperfect; geography unknown; and the hardships of travelling excessive. But the spirit of migration, of which we have now only some faint ideas, was then strong and universal; and it fully compensated all these disadvantages. Many writers indeed imagine that these migrations, so common in the primitive times, were caused by the prodigious increase of people beyond what their several territories could maintain. But this opinion, far from being supported, is rather contradicted, by the general appearance of things in that early time, when in every country vast tracts of land were suffered to lie almost useless in morasses and forests. Nor is it, indeed, more countenanced by the ancient modes of life, no way favourable to population. I ap-

prehend, that these first settled countries, so far from being overstocked with inhabitants, were rather thinly peopled; and that the same causes which occasioned that thinness, occasioned also those frequent migrations which make so large a part of the first history of almost all nations. For in these ages men subsisted chiefly by pasturage or hunting. These are the occupations which spread the people without multiplying them in proportion; they teach them an extensive knowledge of the country; they carry them frequently and far from their homes; and weaken those ties which might attach them to any particular habitation.

It was in a great degree from this manner of life that mankind became scattered in the earliest times over the whole globe. But their peaceful occupations did not contribute so much to that end as their wars, which were not the less frequent and violent because the people were few, and the interests for which they contended of but small importance. Ancient history has furnished us with many instances of whole nations, expelled by invasion, falling in upon others, which they have entirely overwhelmed; more irresistible in their defeat and ruin than in their fullest prosperity. The rights of war were then exercised with great inhumanity. A cruel death, or a servitude scarcely less cruel, was the certain fate of all conquered people; the terror of which hurried men from habitations to which they were but little attached, to seek security and repose under any climate that, however in other respects undesirable, might afford them refuge from the fury of their enemies. Thus the bleak and barren regions of the north, not being peopled by choice, were peopled as early, in all probability, as many of the milder and more inviting climates of the southern world; and thus, by a wonderful disposition of the Divine Providence, a life of hunting, which does not contribute to increase, and war, which is the great instrument in the destruction of men, were the two principal causes of their being spread so early and so universally over the whole earth. From what is very commonly known of the state of North America, it need not be said how often, and to what distance, several of the nations on that continent are used to migrate; who, though thinly scattered, occupy an immense extent of country. Nor are the causes of it less obvious,—their hunting life, and their inhuman wars.

Such migrations, sometimes by choice, more frequently from necessity, were common in the ancient world. Frequent necessities introduced a fashion, which subsisted after the original causes. For how could it happen but from some universally established public prejudice, which always overrules and stifles the private sense of men, that a whole nation should deliberately think it a wise measure to quit their country in a body, that they might obtain in a foreign land a settlement which must wholly depend upon the chance of war? Yet this resolution was taken, and actually pursued, by the entire nation of the Helvetii, as it is minutely related by Cæsar. The method of reasoning which led them to it must appear to us at this day utterly inconceivable; they were far from being compelled to this extraordinary migration by any want of subsistence at home; for it appears that they raised, without difficulty, as much corn in one year as supported them for two; they could not complain of the barrenness of such a soil.

This spirit of migration, which grew out of the ancient manners and necessities, and sometimes operated like a blind instinct, such as actuates birds of passage, is very sufficient to account for the early habitation of the remotest parts of the earth; and in some sort also justifies that claim which has been so fondly made by almost all nations to great antiquity.

Gaul, from whence Britain was originally peopled, consisted of three nations; the Belgæ towards the north; the Celtæ in the middle countries; and the Aquitani to the south. Britain appears to have received its people only from the two former. From the Celtæ were derived the most ancient tribes of the Britons, of which the most considerable were called Brigantes. The Belgæ, who did not even settle in Gaul until after Britain had been peopled by colonies from the former, forcibly drove the Brigantes into the inland countries, and possessed the greatest part of the coast, especially to the south and west. These latter, as they entered the island in a more improved age, brought with them the knowledge and practice of agriculture; which, however, only prevailed in their own countries; the Brigantes still continued their ancient way of life by pasturage and hunting. In this respect alone they differed; so that what we shall say in

treating of their manners is equally applicable to both. And though the Britons were further divided into an innumerable multitude of lesser tribes and nations, yet, all being the branches of these two stocks, it is not to our purpose to consider them more minutely.

Britain was in the time of Julius Cæsar what it is at this day in climate and natural advantages, temperate and reasonably fertile. But, destitute of all those improvements which in a succession of ages it has received from ingenuity, from commerce, from riches and luxury, it then wore a very rough and savage appearance. The country, forest or marsh; the habitations, cottages; the cities, hiding-places in woods; the people, naked, or only covered with skins; their sole employment, pasturage and hunting. They painted their bodies for ornament or terror, by a custom general amongst all savage nations; who, being passionately fond of show and finery, and having no object but their naked bodies on which to exercise this disposition, have in all times painted or cut their skins, according to their ideas of ornament. They shaved the beard on the chin; that on the upper lip was suffered to remain, and grow to an extraordinary length, to favour the martial appearance, in which they placed their glory. They were in their natural temper not unlike the Gauls; impatient, fiery, inconstant, ostentatious, boastful, fond of novelty; and, like all barbarians, fierce, treacherous, and cruel. Their arms were short javelins, small shields of a slight texture, and great cutting swords with a blunt point, after the Gaulish fashion.

Their chiefs went to battle in chariots, not unartfully contrived, nor unskilfully managed. I cannot help thinking it something extraordinary, and not easily to be accounted for, that the Britons should have been so expert in the fabric of those chariots, when they seem utterly ignorant in all other mechanic arts; but thus it is delivered to us. They had also horse, though of no great reputation, in their armies. Their foot was without heavy armour; it was no firm body; nor instructed to preserve their ranks, to make their evolutions, or to obey their commanders; but in tolerating hardships, in dexterity of forming ambuscades, (the art military of savages,) they are said to have excelled. A natural ferocity, and an impetuous onset, stood them in the place of discipline.

It is very difficult, at this distance of time, and with so little information, to discern clearly what sort of civil government prevailed among the ancient Britons. In all very uncultivated countries, as society is not close or intricate, nor property very valuable, liberty subsists with few restraints. The natural equality of mankind appears, and is asserted; and therefore there are but obscure lines of any form of government. In every society of this sort the natural connexions are the same as in others, though the political ties are weak. Among such barbarians, therefore, though there is little authority in the magistrate, there is often great power lodged, or rather left, in the father; for, as among the Gauls, so among the Britons, he had the power of life and death in his own family, over his children and his servants.

But among freemen and heads of families causes of all sorts seem to have been decided by the Druids: they summoned and dissolved all the public assemblies; they alone had the power of capital punishments, and indeed seem to have had the sole execution and interpretation of whatever laws subsisted among this people. In this respect the Celtic nations did not greatly differ from others, except that we view them in an earlier stage of society. Justice was in all countries originally administered by the priesthood; nor indeed could laws in their first feeble state have either authority or sanction, so as to compel men to relinquish their natural independence, had they not appeared to come down to them enforced by beings of more than human power. The first openings of civility have been everywhere made by religion. Amongst the Romans, the custody and interpretation of the laws continued solely in the college of the pontiffs for above a century.[1]

The time in which the Druid priesthood was instituted is unknown. It probably rose, like other institutions of that kind, from low and obscure beginnings; and acquired from time, and the labours of able men, a form, by which it extended itself so far, and attained at length so mighty an influence over the minds of a fierce, and otherwise ungovernable, people. Of the place where it arose there is somewhat less doubt: Cæsar mentions it as the common opinion that this institution began in Britain; that there it always re-

[1] Digest. lib. I. tit. ii. De origine et processu juris, 2.

mained in the highest perfection, and that from thence it diffused itself into Gaul. I own I find it not easy to assign any tolerable cause why an order of so much authority, and a discipline so exact, should have passed from the more barbarous people to the more civilized; from the younger to the older; from the colony to the mother country: but it is not wonderful that the early extinction of this order, and that general contempt in which the Romans held all the barbarous nations, should have left these matters obscure and full of difficulty.

The Druids were kept entirely distinct from the body of the people; and they were exempted from all the inferior and burdensome offices of society, that they might be at leisure to attend the important duties of their own charge. They were chosen out of the best families, and from the young men of the most promising talents; a regulation which placed and preserved them in a respectable light with the world. None were admitted into this order but after a long and laborious novitiate, which made the character venerable in their own eyes by the time and difficulty of attaining it. They were much devoted to solitude, and thereby acquired that abstracted and thoughtful air which is so imposing upon the vulgar. And when they appeared in public it was seldom, and only on some great occasion; in the sacrifices of the gods, or on the seat of judgment. They prescribed medicine; they formed the youth; they paid the last honours to the dead; they foretold events; they exercised themselves in magic. They were at once the priests, lawgivers, and physicians of their nation; and consequently concentred in themselves all that respect that men have diffusively for those who heal their diseases, protect their property, or reconcile them to the Divinity. What contributed not a little to the stability and power of this order was the extent of its foundation, and the regularity and proportion of its structure. It took in both sexes; and the female Druids were in no less esteem for their knowledge and sanctity than the males. It was divided into several subordinate ranks and classes; and they all depended upon a chief or Arch-Druid, who was elected to his place with great authority and preëminence for life. They were further armed with a power of interdicting from their sacrifices, or excommunicating, any obnoxious

persons. This interdiction, so similar to that used by the ancient Athenians, and to that since practised among Christians, was followed by an exclusion from all the benefits of civil community; and it was accordingly the most dreaded of all punishments. This ample authority was in general usefully exerted; by the interposition of the Druids differences were composed, and wars ended; and the minds of the fierce northern people, being reconciled to each other under the influence of religion, united with signal effect against their common enemies.

There was a class of the Druids, whom they called Bards, who delivered in songs (their only history) the exploits of their heroes; and who composed those verses, which contained the secrets of Druidical discipline, their principles of natural and moral philosophy, their astronomy, and the mystical rights of their religion. These verses in all probability bore a near resemblance to the golden verses of Pythagoras; to those of Phocylides, Orpheus, and other remnants of the most ancient Greek poets. The Druids, even in Gaul, where they were not altogether ignorant of the use of letters, in order to preserve their knowledge in greater respect, committed none of their precepts to writing. The proficiency of their pupils was estimated principally by the number of technical verses which they retained in their memory: a circumstance that shows this discipline rather calculated to preserve with accuracy a few plain maxims of traditionary science, than to improve and extend it. And this is not the sole circumstance which leads us to believe that among them learning had advanced no further than its infancy.

The scholars of the Druids, like those of Pythagoras, were carefully enjoined a long and religious silence; for if barbarians come to acquire any knowledge it is rather by instruction than examination; they must therefore be silent. Pythagoras, in the rude times of Greece, required silence in his disciples; but Socrates, in the meridian of the Athenian refinement, spoke less than his scholars; everything was disputed in the Academy.

The Druids are said to be very expert in astronomy, in geography, and in all parts of mathematical knowledge. And authors speak, in a very exaggerated strain, of their excellence in these, and in many other sciences. Some elemental

knowledge I suppose they had; but I can scarcely be persuaded that their learning was either deep or extensive. In all countries where Druidism was professed the youth were generally instructed by that order; and yet was there little either in the manners of the people, in their way of life, or their works of art, that demonstrates profound science, or particularly mathematical skill. Britain, where their discipline was in its highest perfection, and which was therefore resorted to by the people of Gaul, as an oracle in Druidical questions, was more barbarous in all other respects than Gaul itself, or than any other country then known in Europe. Those piles of rude magnificence, Stonehenge and Abury, are in vain produced in proof of their mathematical abilities. These vast structures have nothing which can be admired, but the greatness of the work; and they are not the only instances of the great things which the mere labour of many hands united, and persevering in their purpose, may accomplish with very little help from mechanics. This may be evinced by the immense buildings, and the low state of the sciences, among the original Peruvians.

The Druids were eminent, above all the philosophic lawgivers of antiquity, for their care in impressing the doctrine of the soul's immortality on the minds of their people, as an operative and leading principle. This doctrine was inculcated on the scheme of transmigration, which some imagine them to have derived from Pythagoras. But it is by no means necessary to resort to any particular teacher for an opinion which owes its birth to the weak struggles of unenlightened reason, and to mistakes natural to the human mind. The idea of the soul's immortality is indeed ancient, universal, and in a manner inherent in our nature: but it is not easy for a rude people to conceive any other mode of existence than one similar to what they had experienced in life; nor any other world as the scene of such an existence but this we inhabit, beyond the bounds of which the mind extends itself with great difficulty. Admiration, indeed, was able to exalt to heaven a few selected heroes: it did not seem absurd that those, who in their mortal state had distinguished themselves as superior and overruling spirits, should after death ascend to that sphere which influences and governs everything below; or that the proper abode of beings,

at once so illustrious and permanent, should be in that part of nature in which they had always observed the greatest splendour and the least mutation. But on ordinary occasions it was natural some should imagine that the dead retired into a remote country, separated from the living by seas or mountains. It was natural that some should follow their imagination with a simplicity still purer, and pursue the souls of men no further than the sepulchres in which their bodies had been deposited;[1] whilst others of deeper penetration, observing that bodies worn out by age, or destroyed by accidents, still afforded the materials for generating new ones, concluded likewise that a soul being dislodged did not wholly perish, but was destined, by a similar revolution in nature, to act again, and to animate some other body. This last principle gave rise to the doctrine of transmigration; but we must not presume of course that where it prevailed it necessarily excluded the other opinions; for it is not remote from the usual procedure of the human mind, blending, in obscure matters, imagination and reasoning together, to unite ideas the most inconsistent. When Homer represents the ghosts of his heroes appearing at the sacrifices of Ulysses, he supposes them endued with life, sensation, and a capacity of moving, but he has joined to these powers of living existence uncomeliness, want of strength, want of distinction, the characteristics of a dead carcass. This is what the mind is apt to do; it is very apt to confound the ideas of the surviving soul and the dead body. The vulgar have always, and still do confound these very irreconcilable ideas. They lay the scene of apparitions in church-yards; they habit the ghost in a shroud; and it appears in all the ghastly paleness of a corpse. A contradiction of this kind has given rise to a doubt whether the Druids did in reality hold the doctrine of transmigration. There is positive testimony that they did hold it. There is also testimony as positive that they buried or burned with the dead, utensils, arms, slaves, and whatever might be judged useful to them, as if they were to be removed into a separate state. They might have held both these opinions; and we ought not to be surprised to find error inconsistent.

[1] Cic. Tusc. Quest. lib. 1.

The objects of the Druid worship were many. In this respect they did not differ from other heathens; but it must be owned that in general their ideas of divine matters were more exalted than those of the Greeks and Romans; and that they did not fall into an idolatry so coarse and vulgar. That their gods should be represented under a human form, they thought derogatory to beings uncreated and imperishable. To confine what can endure no limits within walls and roofs, they judged absurd and impious. In these particulars there was something refined, and suitable enough to a just idea of the Divinity. But the rest was not equal. Some notions they had, like the greatest part of mankind, of a Being eternal and infinite; but they also, like the greatest part of mankind, paid their worship to inferior objects, from the nature of ignorance and superstition always tending downwards.

The first and chief objects of their worship were the elements; and, of the elements, fire, as the most pure, active, penetrating, and what gives life and energy to all the rest. Among fires, the preference was given to the sun, as the most glorious visible being, and the fountain of all life. Next they venerated the moon and the planets. After fire, water was held in reverence. This, when pure, and ritually prepared, was supposed to wash away all sins, and to qualify the priest to approach the altar of the gods with more acceptable prayers; washing with water being a type natural enough of inward cleansing and purity of mind. They also worshipped fountains, and lakes, and rivers.

Oaks were regarded by this sect with a particular veneration, as by their greatness, their shade, their stability, and duration, not ill representing the perfections of the Deity. From the great reverence in which they held this tree, it is thought their name of Druids is derived, the word Deru in the Celtic language signifying an oak. But their reverence was not wholly confined to this tree. All forests were held sacred; and many particular plants were respected, as endued with a particular holiness. No plant was more revered than the mistletoe: especially if it grew on the oak; not only because it is rarely found upon that tree, but because the oak was among the Druids peculiarly sacred. Towards the end of the year they searched for this plant, and when it was found great rejoicing ensued; it was approached with reverence; it

was cut with a golden hook; it was not suffered to fall to the ground, but received with great care and solemnity upon a white garment.

In ancient times, and in all countries, the profession of physic was annexed to the priesthood. Men imagined that all their diseases were inflicted by the immediate displeasure of the Deity, and therefore concluded that the remedy would most probably proceed from those who were particularly employed in his service. Whatever, for the same reason, was found of efficacy to avert or cure distempers was considered as partaking somewhat of the Divinity. Medicine was always joined with magic; no remedy was administered without mysterious ceremony and incantation. The use of plants and herbs, both in medicinal and magical practices, was early and general. The mistletoe, pointed out by its very peculiar appearance and manner of growth, must have struck powerfully on the imaginations of a superstitious people. Its virtues may have been soon discovered. It has been fully proved against the opinion of Celsus, that internal remedies were of very early use.[1] Yet if it had not, the practice of the present savage nations supports the probability of that opinion. By some modern authors the mistletoe is said to be of signal service in the cure of certain convulsive distempers, which by their suddenness, their violence, and their unaccountable symptoms, have been ever considered as supernatural. The epilepsy was by the Romans for that reason called *Morbus Sacer;* and all other nations have regarded it in the same light. The Druids also looked upon vervain, and some other plants, as holy, and probably for a similar reason.

The other objects of the Druid worship were chiefly serpents in the animal world, and rude heaps of stone, or great pillars without polish or sculpture, in the inanimate. The serpent by his dangerous qualities is not ill adapted to inspire terror; by his annual renewals, to raise admiration; by his make, easily susceptible of many figures, to serve for a variety of symbols; and by all, to be an object of religious observance: accordingly no object of idolatry has been more universal.[2]

[1] See this point in the Divine Legation of Moses.

[2] Περι παντι νομιζομενων παρ ὑμιν θεων οφις συμβολον μεγα καὶ μυστηριον αναγραφεται. Justin Martyr in Stillingfleet's Origines Sacræ

And this is so natural, that serpent-veneration seems to be rising again even in the bosom of Mahometanism.[1]

The great stones, it has been supposed, were originally monuments of illustrious men, or the memorials of considerable actions; or they were landmarks for deciding the bounds of fixed property. In time, the memory of the persons or facts which these stones were erected to perpetuate wore away; but the reverence which custom, and probably certain periodical ceremonies, had preserved for those places was not so soon obliterated. The monuments themselves then came to be venerated; and not the less because the reason for venerating them was no longer known. The land-mark was in those times held sacred on account of its great uses, and easily passed into an object of worship. Hence the god Terminus amongst the Romans. This religious observance towards rude stones is one of the most ancient and universal of all customs. Traces of it are to be found in almost all, and especially in these northern nations; and to this day in Lapland, where heathenism is not yet entirely extirpated, their chief divinity, which they call *Stor Junkare*,[2] is nothing more than a rude stone.

Some writers among the moderns, because the Druids ordinarily made no use of images in their worship, have given in to an opinion, that their religion was founded on the unity of the Godhead. But this is no just consequence. The spirituality of the idea, admitting their idea to have been spiritual, does not infer the unity of the object. All the ancient authors who speak of this order agree, that, besides those great and more distinguishing objects of their worship already mentioned, they had gods answerable to those adored by the Romans. And we know that the northern nations, who overran the Roman empire, had in fact a great plurality of gods, whose attributes, though not their names, bore a close analogy to the idols of the southern world.

The Druids performed the highest act of religion by sacrifice, agreeably to the custom of all other nations. They not only offered up beasts, but even human victims; a barbarity almost universal in the heathen world, but exercised more uniformly, and with circumstances of peculiar cruelty,

[1] Norden's Travels.
[2] Scheffer's Lapland, p 92, the translation.

amongst those nations where the religion of the Druids prevailed. They held that the life of a man was the only atonement for the life of a man. They frequently enclosed a number of wretches, some captives, some criminals, and, when these were wanting, even innocent victims, in a gigantic statue of wicker-work, to which they set fire, and invoked their deities amidst the horrid cries and shrieks of the sufferers, and the shouts of those who assisted at this tremendous rite.

There were none among the ancients more eminent for all the arts of divination than the Druids. Many of the superstitious practices in use to this day among the country people for discovering their future fortune seem to be remains of Druidism. Futurity is the great concern of mankind. Whilst the wise and learned look back upon experience and history, and reason from things past about events to come, it is natural for the rude and ignorant, who have the same desires without the same reasonable means of satisfaction, to inquire into the secrets of futurity, and to govern their conduct by omens, dreams, and prodigies. The Druids, as well as the Etruscan and Roman priesthood, attended with diligence the flight of birds, the pecking of chickens, and the entrails of their animal sacrifices. It was obvious that no contemptible prognostics of the weather were to be taken from certain motions and appearances in birds and beasts.[1] A people who lived mostly in the open air must have been well skilled in these observations. And as changes in the weather influenced much the fortune of their huntings or their harvests, which were all their fortunes, it was easy to apply the same prognostics to every event by a transition very natural and common; and thus probably arose the science of auspices, which formerly guided the deliberations of councils, and the motions of armies, though now they only serve, and scarcely serve, to amuse the vulgar.

The Druid temple is represented to have been nothing more than a consecrated wood. The ancients speak of no other. But monuments remain which show that the Druids were not in this respect wholly confined to groves. They had also a species of building, which in all probability was destined to religious use. This sort of structure was indeed

[1] Cic de Divinatione, l. 1.

without walls or roof. It was a colonnade, generally circular, of huge rude stones, sometimes single, sometimes double; sometimes with, often without, an architrave. These open temples were not in all respects peculiar to the northern nations. Those of the Greeks which were dedicated to the celestial gods, ought in strictness to have had no roof, and were thence called *Hypæthra.*[1]

Many of these monuments remain in the British islands, curious for their antiquity, or astonishing for the greatness of the work; enormous masses of rock, so poised as to be set in motion with the slightest touch, yet not to be pushed from their place by a very great power: vast altars, peculiar and mystical in their structure, thrones, basins, heaps, or kearns; and a variety of other works, displaying a wild industry, and a strange mixture of ingenuity and rudeness. But they are all worthy of attention; not only as such monuments often clear up the darkness, and supply the defects, of history, but as they lay open a noble field of speculation for those who study the changes which have happened in the manners, opinions, and sciences of men, and who think them as worthy of regard as the fortune of wars, and the revolutions of kingdoms.

The short account which I have here given does not contain the whole of what is handed down to us by ancient writers, or discovered by modern research, concerning this remarkable order. But I have selected those which appear to me the most striking features, and such as throw the strongest light on the genius and true character of the Druidical institution. In some respects it was undoubtedly very singular; it stood out more from the body of the people than the priesthood of other nations; and their knowledge and policy appeared the more striking by being contrasted with the great simplicity and rudeness of the people, over whom they presided. But, notwithstanding some peculiar appearances and practices, it is impossible not to perceive a great conformity between this and the ancient orders which have been established for the purposes of religion in almost

[1] Decor perficitur statione, cum Jovi, fulguri, et cœlo et soli et lunæ ædificia sub divo, hypæthraque constituuntur. Horum enim et species et effectus in aperto mundo atque lucenti præsentes vidimus. Vitruv. de Architect. p. 6, de Laet. Antwerp.

all countries. For to say nothing of the resemblance which many have traced between this and the Jewish priesthood, the Persian Magi, and the Indian Brachmans, it did not so greatly differ from the Roman priesthood either in the original objects, or in the general mode of worship, or in the constitution of their hierarchy. In the original institution neither of these nations had the use of images; the rules of the Salian as well as Druid discipline were delivered in verse; both orders were under an elective head; and both were for a long time the lawyers of their country. So that when the order of Druids was suppressed by the emperors, it was rather from a dread of an influence incompatible with the Roman government than from any dislike of their religious opinions.

CHAPTER III.

THE REDUCTION OF BRITAIN BY THE ROMANS.

THE death of Cæsar, and the civil wars which ensued, afforded foreign nations some respite from the Roman ambition. Augustus, having restored peace to mankind, seems to have made it a settled maxim of his reign not to extend the empire. He found himself at the head of a new monarchy; and he was more solicitous to confirm it by the institutions of sound policy than to extend the bounds of its dominion. In consequence of this plan Britain was neglected.

Tiberius came a regular successor to an established government. But his politics were dictated rather by his character than his situation. He was a lawful prince, and he acted on the maxims of a usurper. Having made it a rule never to remove far from the capital, and jealous of every reputation which seemed too great for the measure of a subject, he neither undertook any enterprise of moment in his own person, nor cared to commit the conduct of it to another. There was little in a British triumph that could affect a temper like that of Tiberius.

His successor Caligula was not influenced by this, nor indeed by any regular system; for having undertaken an expedition to Britain without any determined view, he aban-

doned it on the point of execution without reason. And adding ridicule to his disgrace, his soldiers returned to Rome loaded with shells. These spoils he displayed as the ornaments of a triumph which he celebrated over the ocean, if in all these particulars we may trust to the historians of that time, who relate things almost incredible of the folly of their masters, and the patience of the Roman people.

But the Roman people, however degenerate, still retained much of their martial spirit; and as the emperors held their power almost entirely by the affection of the soldiery, they found themselves often obliged to such enterprises as might prove them no improper heads of a military constitution. An expedition to Britain was well adapted to answer all the purposes of this ostentatious policy. The country was remote, and little known; so that every exploit there, as if achieved in another world, appeared at Rome with double pomp and lustre; whilst the sea, which divided Britain from the continent, prevented a failure in that island from being followed by any consequences alarming to the body of the empire. A pretext was not wanting to this war. The maritime Britons, while the terror of the Roman arms remained fresh upon their minds, continued regularly to pay the tribute imposed by Cæsar. But the generation which experienced that war having passed away, that which succeeded felt the burden, but knew from rumour only the superiority which had imposed it. And being very ignorant, as of all things else, so of the true extent of the Roman power, they were not afraid to provoke it by discontinuing the payment of the tribute.

This gave occasion to the emperor Claudius, ninety-seven years after the first expedition of Cæsar, to invade Britain in person, and with a great army. But he, having rather surveyed than conducted the war, left in a short time the management of it to his legate Plautius, who subdued without much difficulty those countries which lay to the southward of the Thames, the best cultivated and most accessible part of the island. But the inhabitants of the rough inland countries, the people called Cattivellauni, made a more strenuous opposition. They were under the command of Caractacus, a chief of great and just renown amongst all the British nations. This leader wisely adjusted

A. D. 43.

his conduct of the war to the circumstances of his savage subjects and his rude country. Plautius obtained no decisive advantages over him. He opposed Ostorius Scapula, who succeeded that general, with the same bravery, but with unequal success. For he was, after various turns of fortune, obliged to abandon his dominions, which Ostorius at length subdued and disarmed.

This bulwark of the British freedom being overturned, Ostorius was not afraid to enlarge his plan. Not content with disarming the enemies of Rome, he proceeded to the same extremities with those nations who had been always quiet, and who, under the name of an alliance, lay ripening for subjection. This fierce people, who looked upon their arms as their only valuable possessions, refused to submit to terms as severe as the most absolute conquest could impose. They unanimously entered into a league against the Romans. But their confederacy was either not sufficiently strong or fortunate to resist so able a commander; and only afforded him an opportunity, from a more comprehensive victory, to extend the Roman province a considerable way to the northern and western parts of the island. The frontiers of this acquisition, which extended along the rivers Severn and Nen, he secured by a chain of forts and stations: the inland parts he quieted by the settlement of colonies of his veteran troops at Maldon and Verulam; and such was the beginning of those establishments which afterwards became so numerous in Britain. This commander was the first who traced in this island a plan of settlement and civil policy to concur with his military operations. For after he had settled these colonies, considering with what difficulty any, and especially an uncivilized, people are broke into submission to a foreign government, he imposed it on some of the most powerful of the British nations in a more indirect manner. He placed them under kings of their own race; and whilst he paid this compliment to their pride, he secured their obedience by the interested fidelity of a prince who knew that, as he owed the beginning, so he depended for the duration, of his authority wholly upon their favour. Such was the dignity and extent of the Roman policy, that they could number even royalty itself amongst their instruments of servitude.

Ostorius did not confine himself within the boundaries of

these rivers. He observed, that the Silures, inhabitants of South Wales, one of the most martial tribes in Britain, were yet unhurt and almost untouched by the war. He could expect to make no progress to the northward, whilst an enemy of such importance hung upon his rear; especially as they were now commanded by Caractacus, who preserved the spirit of a prince, though he had lost his dominions; and fled from nation to nation, wherever he could find a banner erected against the Romans. His character obtained him reception and command.

Though the Silures, thus headed, did everything that became their martial reputation, both in the choice and defence of their posts, the Romans, by their discipline, and the weight and excellence of their arms, prevailed over the naked bravery of this gallant people and defeated them in a great battle. Caractacus was soon after betrayed A. D. 51. into their hands, and conveyed to Rome. The merit of the prisoner was the sole ornament of a triumph, celebrated over an indigent people by a gallant chief. The Romans crowded eagerly to behold the man, who with inferior forces, and in an obscure corner of the world, had so many years stood up against the weight of their empire.

As the arts of adulation improved in proportion as the real grandeur of Rome declined, this advantage was compared to the greatest conquests in the most flourishing times of the republic; and so far as regarded the personal merit of Caractacus, it could not be too highly rated. Being brought before the emperor he behaved with such manly fortitude, and spoke of his former actions and his present condition with so much plain sense and unaffected dignity, that he moved the compassion of the emperor, who remitted much of that severity which the Romans formerly exercised upon their captives. Rome was now a monarchy, and that fierce republican spirit was abated, which had neither feeling nor respect for the character of unfortunate sovereigns.

The Silures were not reduced by the loss of Caractacus, and the great defeat they had suffered. They resisted every measure of force or artifice that could be employed against them, with the most generous obstinacy; a resolution in which they were confirmed by some imprudent words of the legate, threatening to extirpate, or what appeared to them

scarcely less dreadful, to transplant, their nation. Their natural bravery thus hardened into despair, and inhabiting a country very difficult of access, they presented an impenetrable barrier to the progress of that commander. Insomuch that, wasted with continual cares, and with the mortification to find the end of his affairs so little answerable to the splendour of their beginning, Ostorius died of grief, and left all things in confusion.

The legates who succeeded to his charge did little more, for about sixty years, than secure the frontiers of the Roman province. But in the beginning of Nero's reign the command in Britain was devolved on Suetonius Paulinus, a soldier of merit and experience; who, when he came to view the theatre of his future operations, and had well considered the nature of the country, discerned evidently that the war must of necessity be protracted to a great length, if he should be obliged to penetrate into every fastness to which the enemy retired, and to combat their flying parties one by one. He therefore resolved to make such a blow at the head, as must of course disable all the inferior members.

The island then called Mona, now Anglesey, at that time was the principal residence of the Druids. Here their councils were held, and their commands from hence were dispersed among all the British nations. Paulinus proposed, in reducing this their favourite and sacred seat, to destroy, or at least greatly to weaken, the body of Druids; and thereby to extinguish the great actuating principle of all the Celtic people, and that which was alone capable of communicating order and energy to their operations.

Whilst the Roman troops were passing that strait which divides this island from the continent of Britain, they halted on a sudden; not checked by the resistance of the enemy, but suspended by a spectacle of an unusual and altogether surprising nature. On every side of the British army were seen bands of Druids in their most sacred habits, surrounding the troops, lifting their hands to heaven, devoting to death their enemies, and animating their disciples to religious frenzy by the uncouth ceremonies of a savage ritual, and the horrid mysteries of a superstition familiar with blood. The female Druids also moved about in a troubled order, their hair dishevelled, their garments torn, torches in their

hands, and, with a horror increased by the perverted softness of their sex, howled out the same curses and incantations with greater clamour.[1] Astonished at this sight the Romans for some time neither advanced nor returned the darts of the enemy. But at length, rousing from their trance, and animating each other with the shame of yielding to the impotence of female and fanatical fury, they found the resistance by no means proportioned to the horror and solemnity of the preparations. These overstrained efforts had, as frequently happens, exhausted the spirits of the men, and stifled that ardour they were intended to kindle. The Britons were defeated; and Paulinus, pretending to detest the barbarity of their superstition, in reality from the cruelty of his own nature, and that he might cut off the occasion of future disturbances, exercised the most unjustifiable severities on this unfortunate people. He burned the Druids in their own fires; and that no retreat might be afforded to that order, their consecrated woods were everywhere destroyed. Whilst he was occupied in this service, a general rebellion broke out, which his severity to the Druids served rather to inflame than allay.

From the manners of the republic a custom had been ingrafted into the monarchy of Rome, altogether unsuitable to that mode of government. In the time of the commonwealth, those, who lived in a dependent and cliental relation on the great men, used frequently to show marks of their acknowledgment by considerable bequests at their death. But when all the scattered powers of that state became united in the emperor, these legacies followed the general current, and flowed in upon the common patron. In the will of every considerable person he inherited with the children and relations, and such devises formed no inconsiderable part of his revenue; a monstrous practice, which let an absolute sovereign into all the private concerns of his subjects; and which, by giving the

[1] There is a curious instance of a ceremony not unlike this in a fragment of an ancient Runic history, which it may not be disagreeable to compare with this part of the British manners. "*Ne vero regem ex improviso adoriretur, Ulafus admoto sacculo suo eundem quatere cœpit, carmen simul magicum obmurmurans hâc verborum formulâ; Duriter increpetur cum tonitru; stringant Cyclopia tela; injiciant manum Parcæ . . . acriter excipiant monticolæ Genii plurimi atque gigantes . . contundant; quatiant procellæ . . . disrumpant lapides navigium ejus. . .* " Hickesii. Thesaur. vol. iii. p. 140.

prince a prospect of one day sharing in all the great estates, whenever he was urged by avarice or necessity, naturally pointed out a resource by an anticipation always in his power. This practice extended into the provinces. A king of the Iceni[1] had devised a considerable part of his substance to the emperor. But the Roman procurator, not satisfied with entering into his master's portion, seized upon the rest; and, pursuing his injustice to the most horrible outrages, publicly scourged Boadicea, queen to the deceased prince, and violated his daughters. These cruelties, aggravated by the shame and scorn that attended them; the general severity of the government; the taxes (new to a barbarous people) laid on without discretion, extorted without mercy, and even, when respited, made utterly ruinous by exorbitant usury; the further mischiefs they had to dread, when more completely reduced; all these, with the absence of the legate and the army on a remote expedition, provoked all the tribes of the Britons, provincials, allies, enemies, to a general insurrection. The command of this confederacy was conferred on Boadicea, as the first in rank and resentment of injuries. They began by cutting off a Roman legion; then they fell upon the colonies of Camolodunum and Verulam, and with a barbarous fury butchered the Romans and their adherents to the number of seventy thousand.

An end had been now put to the Roman power in this island, if Paulinus, with unexampled vigour and prudence, had not conducted his army through the midst of the enemy's country from Anglesey to London. There uniting the soldiers that remained dispersed in different garrisons, he formed an army of ten thousand men, and marched to attack the enemy in the height of their success and security. The army of the Britons is said to have amounted to two hundred and thirty thousand; but it was ill composed, and without choice or order; women, boys, old men, priests; full of presumption, tumult, and confusion. Boadicea was at their head; a woman of masculine spirit, but precipitant, and without any military knowledge.

The event was such as might have been expected. Paulinus, having chosen a situation favourable to the smallness of his numbers, and encouraged his troops not to dread a multitude

[1] Inhabitants of Norfolk and Suffolk.

whose weight was dangerous only to themselves, piercing into the midst of that disorderly crowd, after a blind and furious resistance, obtained a complete victory. Eighty thousand Britons fell in this battle.

Paulinus improved the terror this slaughter had produced by the unparalleled severities which he exercised. This method would probably have succeeded to subdue, but at the same time to depopulate, the nation, if such loud complaints had not been made at Rome of the legate's cruelty as procured his recall. A. D. 61.

Three successive legates carried on the affairs of Britain during the latter part of Nero's reign, and during the troubles occasioned by the disputed succession. But they were all of an inactive character. The victory obtained by Paulinus had disabled the Britons from any new attempt. Content, therefore, with recovering the Roman province, these generals compounded, as it were, with the enemy for the rest of the island. They caressed the troops; they indulged them in their licentiousness; and, not being of a character to repress the seditions that continually arose, they submitted to preserve their ease and some shadow of authority, by sacrificing the most material parts of it. And thus they continued, soldiers and commanders, by a sort of compact, in a common neglect of all duty on the frontiers of the empire in the face of a bold and incensed enemy.

But when Vespasian arrived to the head of affairs, he caused the vigour of his government to be felt in Britain, as he had done in all the other parts of the empire. He was not afraid to receive great services. His legates Cerealis and Frontinus reduced the Silures and Brigantes; one the most warlike, the other the most numerous, people in the island. But its final reduction and perfect settlement were reserved for Julius Agricola, a man by whom it was a happiness for the Britons to be conquered. He was endued with all those bold and popular virtues which would have given him the first place in the times of the free republic; and he joined to them all that reserve and moderation which enabled him to fill great offices with safety, and made him a good subject under a jealous despotism. A. D. 61. A. D. 71.

Though the summer was almost spent when he arrived in

Britain, knowing how much the vigour and success of the first stroke influences all subsequent measures, he entered immediately into action. After reducing some tribes, Mona became the principal object of his attention. The cruel ravages of Paulinus had not entirely effaced the idea of sanctity, which the Britons, by a long course of hereditary reverence, had annexed to that island. It became once more a place of consideration by the return of the Druids.

Here Agricola observed a conduct very different from that of his predecessor Paulinus; the island, when he had reduced it, was treated with great lenity. Agricola was a man of humanity and virtue; he pitied the condition, and respected the prejudices, of the conquered. This behaviour facilitated the progress of his arms; insomuch that, in less than two campaigns, all the British nations, comprehended in what we now call England, yielded themselves to the Roman government, as soon as they found that peace was no longer to be considered as a dubious blessing. Agricola carefully secured the obedience of the conquered people by building forts and stations in the most important and commanding places. Having taken these precautions for securing his rear, he advanced northwards; and, penetrating into Caledonia, as far as the river Tay, he there built a *pretentura*, or line of forts, between the two firths, which are in that place no more than twenty miles asunder. The enemy, says Tacitus, was removed, as it were, into another island; and this line Agricola seems to have destined as the boundary of the empire. For though in the following year he carried his arms further, and as it is thought to the foot of the Grampian mountains, and there defeated a confederate army of the Caledonians, headed by Galgacus, one of their most famous chiefs, yet he built no fort to the northward of this line; a measure which he never omitted when he intended to preserve his conquests. The expedition of that summer was probably designed only to disable the Caledonians from attempting anything against his barrier. But he left them their mountains, their arms, and their liberty; a policy, perhaps, not altogether worthy of so able a commander. He might the more easily have completed the conquest of the whole island by means of the fleet, which he equipped to coöperate with his land forces in that expedition. This fleet sailed quite round Britain, which had not

been before, by any certain proof, known to be an island; a circumnavigation, in that immature state of naval skill, of little less fame than a voyage round the globe in the present age.

In the interval between his campaigns Agricola was employed in the great labours of peace. He A. D. 84. knew that the general must be perfected by the legislator; and that the conquest is neither permanent nor honourable, which is only an introduction to tyranny. His first care was the regulation of his household; which, under former legates, had been always full of faction and intrigue, lay heavy on the province, and was as difficult to govern. He never suffered his private partialities to intrude into the conduct of public business; nor in appointing to employments did he permit solicitation to supply the place of merit, wisely sensible that a proper choice of officers is almost the whole of government. He eased the tribute of the province, not so much by reducing it in quantity, as by cutting off all those vexatious practices which attended the levying of it, far more grievous than the imposition itself. Every step in securing the subjection of the conquered country was attended with the utmost care in providing for its peace and internal order. Agricola reconciled the Britons to the Roman government by reconciling them to the Roman manners. He moulded that fierce nation by degrees to soft and social customs; leading them imperceptibly into a fondness for baths, for gardens, for grand houses, and all the commodious elegancies of a cultivated life. He diffused a grace and dignity over this new luxury by the introduction of literature. He invited instructors in all the arts and sciences from Rome; and he sent the principal youth of Britain to that city to be educated at his own expense. In short, he subdued the Britons by civilizing them; and made them exchange a savage liberty for a polite and easy subjection. His conduct is the most perfect model for those employed in the unhappy, but sometimes necessary, task of subduing a rude and free people.

Thus was Britain, after a struggle of fifty-four years, entirely bent under the yoke, and moulded into the Roman empire. How so stubborn an opposition could have been so long maintained against the greatest power on earth, by a people ill armed, worse united, without revenues, without

discipline, has justly been deemed an object of wonder. Authors are generally contented with attributing it to the extraordinary bravery of the ancient Britons. But certainly the Britons fought with armies as brave as the world ever saw, with superior discipline, and more plentiful resources.

To account for this opposition we must have recourse to the general character of the Roman politics at this time. War, during this period, was carried on upon principles very different from those that actuated the republic. Then one uniform spirit animated one body through whole ages. With whatever state they were engaged, the war was so prosecuted as if the republic could not subsist unless that particular enemy were totally destroyed. But when the Roman dominion had arrived to as great an extent as could well be managed, and that the ruling power had more to fear from disaffection to the government than from enmity to the empire, with regard to foreign affairs common rules and a moderate policy took place. War became no more than a sort of exercise for the Roman forces.[1] Even whilst they were declaring war they looked towards an accommodation; and were satisfied with reasonable terms when they concluded it. Their politics were more like those of the present powers of Europe, where kingdoms seek rather to spread their influence, than to extend their dominion; to awe and weaken, rather than to destroy. Under unactive and jealous princes the Roman legates seldom dared to push the advantages they had gained far enough to produce a dangerous reputation.[2] They wisely stopped when they came to the verge of popularity. And these emperors fearing as much from the generals as their generals from them, such frequent changes were made in the command, that the war was never systematically carried on. Besides, the change of emperors (and their reigns were not long) almost always brought on a change of measures; and the councils even of the same reign were continually fluctuating as opposite court-factions happened to prevail. Add to this, that during the commotions which followed the death of Nero, the contest for the purple

[1] *Rem Romanam huc, satietate gloriæ provectam, ut cæteris quoque nationibus quietem velit.* Tacit. Annal. xii.

[2] *Nam duces, ubi impetrando triumphalium insigni sufficere res suas rediderant, hostem omittebant.* Tacit. iv. c. 23.

turned the eyes of the world from every other object. All persons of consequence interested themselves in the success of some of the contending parties; and the legates in Britain, suspended in expectation of the issue of such mighty quarrels, remained inactive till it could be determined for what master they were to conquer.

On the side of the Roman government these seem to have been some of the causes which so long protracted the fate of Britain. Others arose from the nature of the country itself, and from the manners of its inhabitants. The country was then extremely woody and full of morasses. There were originally no roads. The motion of armies was, therefore, difficult, and communication in many cases impracticable. There were no cities, no towns, no places of cantonment for soldiers; so that the Roman forces were obliged to come into the field late and to leave it early in the season. They had no means to awe the enemy, and to prevent their machinations during the winter. Every campaign they had nearly the same work to begin. When a civilized nation suffers some great defeat, and loses some place critically situated, such is the mutual dependence of the several parts by commerce, and by the orders of a well-regulated community, that the whole is easily secured. A long-continued state of war is unnatural to such a nation. They abound with artisans, with traders, and a number of settled and unwarlike people, who are less disturbed in their ordinary course by submitting to almost any power, than in a long opposition; and as this character diffuses itself through the whole nation, they find it impossible to carry on a war when they are deprived of the usual resources.

But in a country like ancient Britain there are as many soldiers as inhabitants. They unite and disperse with ease. They require no pay nor formal subsistence; and the hardships of an irregular war are not very remote from their ordinary course of life. Victories are easily obtained over such a rude people, but they are rarely decisive; and the final conquest becomes a work of time and patience. All that can be done is to facilitate communication by roads; and to secure the principal avenues, and the most remarkable posts on the navigable rivers, by forts and stations. To conquer the people you must subdue the nature of the

country. The Romans at length effected this; but until this was done they never were able to make a perfect conquest.

I shall now add something concerning the government the Romans settled here, and of those methods which they used to preserve the conquered people under an entire subjection. Those nations who had either passively permitted, or had been instrumental in, the conquest of their fellow Britons, were dignified with the title of allies; and thereby preserved their possessions, laws, and magistrates: they were subject to no kind of charge or tribute. But as their league was not equal, and that they were under the protection of a superior power, they were entirely divested of the right of war and peace; and in many cases an appeal lay to Rome in consequence of their subordinate and dependent situation. This was the lightest species of subjection; and it was generally no more than a step preparatory to a stricter government.

The condition of those towns and communities, called *municipia*, by their being more closely united to the greater state, seemed to partake a degree less of independence. They were adopted citizens of Rome; but whatever was detracted from their ancient liberty was compensated by a more or less complete possession of the privileges which constituted a Roman city, according to the merits which had procured their adoption. These cities were models of Rome in little; their courts and magistrates were the same; and though they were at liberty to retain their old laws, and to make new at their pleasure, they commonly conformed to those of Rome. The *municipia* were not subject to tribute.

When a whole people had resisted the Roman power with great obstinacy, had displayed a readiness to revolt upon every occasion, and had frequently broken their faith, they were reduced into, what the Romans called, the form of a province: that is, they lost their laws, their liberties, their magistrates; they forfeited the greatest part of their lands; and they paid a heavy tribute for what they were permitted to retain.

In these provinces the supreme government was in the *prætor* sent by the senate, who commanded the army, and in his own person exercised the judicial power. Where the sphere of his government was large, he deputed his legates to that employment, who judged according to the standing

laws of the republic, aided by those occasional declarations of law called the prætorial edicts. The care of the revenue was in the *quæstor*. He was appointed to that office in Rome; but when he acted in a judicial capacity, it was always by commission from the *prætor* of the province.[1] Between these magistrates, and all others who had any share in the provincial government, the Roman manners had established a kind of sacred relation, as inviolable as that of blood.[2] All the officers were taught to look up to the *prætor* as their father, and to regard each other as brethren; a firm and useful bond of concord in a virtuous administration; a dangerous and oppressive combination in a bad one. But, like all the Roman institutions, it operated strongly towards its principal purpose,—the security of dominion; which is by nothing so much exposed as the factions and competitions of the officers, when the governing party itself gives the first example of disobedience.

On the overthrow of the commonwealth, a remarkable revolution ensued in the power and the subordination of these magistrates. For as the prince came alone to possess all that was, by a proper title, either imperial or prætorial authority, the ancient prætors dwindled into his legates; by which the splendour and importance of that dignity were much diminished. The business of the quæstor at this time seems to have been transferred to the emperor's procurator. The whole of the public revenue became part of the fisc, and was considered as the private estate of the prince. But the old office under this new appellation rose in proportion as the prætorship had declined. For the procurator seems to have drawn to himself the cognizance of all civil, while capital cases alone were reserved for the judgment of the legate.[3] And though his power was at first restrained within narrow bounds, and all his judgments were subject to a review and reversal by the prætor and the senate, he gradually grew into independence of both, and was at length by Claudius invested with a jurisdiction absolutely uncontrollable. Two cases, I imagine, joined to produce this change; first, the sword was in the

[1] *Sigonii de antiquo jure provinciarum*, l. i and ii.

[2] Cic. in Verrem, 1.

[3] *Duobus insuper inserviendum tyrannis; quorum legatus in sanguinem procurator in bona sæviret.* Tacit. Annal. xii. c 60.

hands of the legate; the policy of the emperors, in order to balance this dangerous authority, thought too much weight could not be thrown into the scale of the procurator; secondly, as the government was now entirely despotical, a connexion between the inferior officers of the empire and the senate[1] was found to shock the reason of that absolute mode of government, which extends the sovereign power in all its fulness to every officer in his own district, and renders him accountable to his master alone for the abuse of it.

The veteran soldiers were always thought entitled to a settlement in the country which had been subdued by their valour. The whole legion, with the tribunes, and centurions, and all the subordinate officers, were seated on an allotted portion of the conquered lands, which were distributed among them according to their rank. These colonies were disposed throughout the conquered country, so as to sustain each other; to surround the possessions that were left to the conquered; to mix with the *municipia* or free towns; and to overawe the allies. Rome extended herself by her colonies into every part of her empire, and was everywhere present. I speak here only of the military colonies, because no other, I imagine, were ever settled in Britain.

There were few countries of any considerable extent, in which all these different modes of government, and different shades and gradations of servitude, did not exist together. There were allies, *municipia*, provinces, and colonies in this island as elsewhere; and those dissimilar parts, far from being discordant, united to make a firm and compact body, the motion of any member of which could only serve to confirm and establish the whole; and when time was given to this structure to coalesce and settle, it was found impossible to break any part of it from the empire.

By degrees the several parts blended and softened into one another. And as the remembrance of enmity on the one hand wore away by time, so on the other the privileges of the Roman citizens at length became less valuable. When nothing throughout so vast an extent of the globe was of consideration but a single man, there was no reason to make any

[1] *Ne principatus vim resolveret, cuncta ad senatum vocando; eam conditionem esse imperandi, ut non aliter ratio constet, quam si uni reddatur* Tacit. Annal. i.

distinction amongst his subjects. Claudius first gave the full rights of the city to all the Gauls. Under Antoninus Rome opened her gates still wider. All the subjects of the empire were made partakers of the same common rights. The provincials flocked in; even slaves were no sooner enfranchised than they were advanced to the highest posts; and the plan of comprehension, which had overturned the republic, strengthened the monarchy.

Before the partitions were thus broken down, in order to support the empire, and to prevent commotions, they had a custom of sending spies into all the provinces; where, if they discovered any provincial laying himself out for popularity, they were sure of finding means, for they scrupled none, to repress him. It was not only the *prætor* with his train of lictors and apparitors, the rods and the axes, and all the insolent parade of a conqueror's jurisdiction; every private Roman seemed a kind of magistrate; they took cognizance of all their words and actions; and hourly reminded them of that jealous and stern authority, so vigilant to discover, and so severe to punish, the slightest deviations from obedience.

As they had framed the action *de pecuniis repetundis* against the avarice and rapacity of the provincial governors, they made at length a law,[1] which, one may say, was against their virtues. For they prohibited them from receiving addresses of thanks on their administration, or any other public mark of acknowledgment, lest they should come to think that their merit or demerit consisted in the good or ill opinion of the people over whom they ruled. They dreaded either a relaxation of government, or a dangerous influence in the legate, from the exertion of a humanity too popular.

These are some of the civil and political methods by which the Romans held their dominion over conquered nations; but even in peace they kept up a great military establishment. They looked upon the interior country to be sufficiently secured by the colonies; their forces were therefore generally quartered on the frontiers. There they had their *Stativa*, or stations, which were strong intrenched camps, many of them fitted even for a winter residence. The communication between these camps, the colonies, and the municipal towns, was formed by great roads, which they called military

[1] Tacit. Annal. l. xv. c. 21, 22.

ways. The two principal of these ran, in almost straight lines, the whole length of England from north to south. Two others intersected them from east to west. The remains show them to have been in their perfection noble works, in all respects worthy the Roman military prudence, and the majesty of the empire. The Anglo-Saxons called them streets.[1] Of all the Roman works they respected and kept up these alone. They regarded them with a sort of sacred reverence, granting them a peculiar protection and great immunities. Those who travelled on them were privileged from arrests in all civil suits.

As the general character of the Roman government was hard and austere, it was particularly so in what regarded the revenue. This revenue was either fixed or occasional. The fixed consisted, first, of an annual tax on persons and lands; but in what proportion to the fortunes of the one, or the value of the other, I have not been able to ascertain. Next was the imposition called *decuma*, which consisted of a tenth, and often a greater portion, of the corn of the province, which was generally delivered in kind. Of all other products a fifth was paid. After this tenth had been exacted on the corn, they were obliged to sell another tenth, or a more considerable part, to the *prætor*, at a price estimated by himself. Even what remained was still subject to be bought up in the same manner, and at the pleasure of the same magistrate; who, independent of these taxes and purchases, received for the use of his household a large portion of the corn of the province. The most valuable of the pasture grounds were also reserved to the public; and a considerable revenue was thence derived, which they called *Scriptura*. The state made a monopoly of almost the whole produce of the land, which paid several taxes, and was further enhanced by passing through several hands, before it came to popular consumption.

The third great branch of the Roman revenue was the *Portorium*, which did not differ from those impositions which we now call customs and duties of export and import.

This was the ordinary revenue; besides which there were occasional impositions for shipping, for military stores and

[1] The four roads they called Watling Street, Ikenild Street, Ermin Street, and the Fosseway.

provisions, and for defraying the expense of the *prætor* and his legates on the various circuits they made for the administration of the province. This last charge became frequently a means of great oppression; and several ways were from time to time attempted, but with little effect, to confine it within reasonable bounds.[1] Amongst the extraordinary impositions must be reckoned the obligation they laid on the provincials to labour at the public works, after the manner of what the French call the *corvée*, and we term statute-labour.

As the provinces, burdened by the ordinary charges, were often in no condition of levying these occasional taxes, they were obliged to borrow at interest. Interest was then to communities at the same exorbitant rate as to individuals. No province was free from a most onerous public debt; and that debt was far from operating like the same engagement contracted in modern states, by which, as the creditor is thrown into the power of the debtor, they often add considerably to their strength, and to the number and attachment of their dependents. The prince in this latter case borrows from the subject, or from a stranger. The one becomes more a subject, and the other less a stranger. But in the Roman provinces the subject borrowed from his master, and he thereby doubled his slavery. The overgrown favourites and wealthy nobility of Rome advanced money to the provincials: and they were in a condition both to prescribe the terms of the loan, and to enforce the payment. The provinces groaned at once under all the severity of public imposition, and the rapaciousness of private usury. They were overrun by publicans, farmers of the taxes, agents, confiscators, usurers, bankers, those numerous and insatiable bodies which always flourished in a burdened and complicated revenue. In a word, the taxes in the Roman empire were so heavy, and in many respects so injudiciously laid on, that they have been not improperly considered as one cause of its decay and ruin. The Roman government, to the very last, carried something of the spirit of conquest in it; and this system of taxes seems rather calculated for the utter impoverishment of nations, in whom a long subjection had not worn away the remembrance of enmity, than for the support of a just commonwealth.

[1] Cod. lib. XII. tit. LXII.

CHAPTER IV.

THE FALL OF THE ROMAN POWER IN BRITAIN.

A. D. 117. After the period which we have just closed, no mention is made of the affairs of Britain until the reign of Adrian. At that time was wrought the first remarkable change in the exterior policy of Rome. Although some of the emperors contented themselves with those limits which they found at their accession, none before this prince had actually contracted the bounds of the empire. For being more perfectly acquainted with all the countries that composed it than any of his predecessors, what was strong and what weak, and having formed to himself a plan wholly defensive, he purposely abandoned several large tracts of territory, that he might render what remained more solid and compact.

A. D. 121. This plan particularly affected Britain. All the conquests of Agricola to the northward of the Tyne were relinquished; and a strong rampart was built from the mouth of that river, on the east, to Solway Firth on the Irish Sea, a length of about eighty miles. But

A. D. 140. in the reign of his successor, Antoninus Pius, other reasonings prevailed, and other measures were pursued. The legate who then commanded in Britain, concluding that the Caledonians would construe the defensive policy of Adrian into fear, that they would naturally grow more numerous in a larger territory, and more haughty when they saw it abandoned to them, the frontier was again advanced to Agricola's second line, which extended between the Firths of Forth and Clyde, and the stations which had been established by that general were connected with a continued wall.

From this time those walls become the principal object in the British history. The Caledonians, or (as they are called) the Picts, made very frequent and sometimes successful attempts upon this barrier, taking advantage more particularly of every change in government, whilst the soldiery throughout the empire were more intent upon the choice of a master than the motions of an enemy. In this dubious state of un-

A. D. 207. quiet peace and unprosecuted war the province continued, until Severus came to the purple; who,

finding that Britain had grown into one of the most considerable provinces of the empire, and was at the same time in a dangerous situation, resolved to visit that island in person, and to provide for its security. He led a vast army into the wilds of Caledonia, and was the first of the Romans who penetrated to the most northern boundary of this island. The natives, defeated in some engagements, and wholly unable to resist so great and determined a power, were obliged to submit to such a peace as the emperor thought proper to impose. Contenting himself with a submission, always cheaply won from a barbarous people, and never long regarded, Severus made no sort of military establishment in that country. On the contrary, he abandoned the advanced work which had been raised in the reign of Antoninus; and, limiting himself by the plan of Adrian, he either built a new wall near the former, or he added to the work of that emperor such considerable improvements and repairs, that it has since been called the wall of Severus. A. D. 208. A. D. 209.

Severus with great labour and charge terrified the Caledonians; but he did not subdue them. He neglected those easy and assured means of subjection which the nature of that part of Britain affords to a power, master of the sea, by the bays, friths, and lakes, with which it is everywhere pierced, and in some places almost cut through. A few garrisons at the necks of land, and a fleet to connect them and to awe the coast, must at any time have been sufficient irrecoverably to subdue that part of Britain. This was a neglect in Agricola occasioned probably by a limited command; and it was not rectified by boundless authority in Severus. The Caledonians again resumed their arms, and renewed their ravages on the Roman frontier. Severus died before he could take any new measures; and from his death there is an almost total silence concerning the affairs of Britain until the division of the empire.

Had the unwieldy mass of that overgrown dominion been effectively divided, and divided into large portions, each forming a state separate, and absolutely independent, the scheme had been far more perfect. Though the empire had perished, these states might have subsisted; and they might have made a far better opposition to the inroads of the barbarians, even

than the whole united; since each nation would have its own strength solely employed in resisting its own particular enemies. For, notwithstanding the resources which might have been expected from the entireness of so great a body, it is clear from history that the Romans were never able to employ with effect, and at the same time, above two armies; and that on the whole they were very unequal to the defence of a frontier of many thousand miles in circuit.

But the scheme which was pursued, the scheme of joint emperors holding by a common title, each governing his proper territory, but not wholly without authority in the other portions, this formed a species of government, of which it is hard to conceive any just idea. It was a government in continual fluctuation from one to many, and from many again to a single hand. Each state did not subsist long enough independent to fall into those orders and connected classes of men, that are necessary to a regular commonwealth; nor had they time to grow into those virtuous partialities, from which nations derive the first principle of their stability.

The events which follow sufficiently illustrate these reflections; and will show the reason of introducing them in this place, with regard to the empire in general, and to Britain more particularly.

In the division which Dioclesian first made of the Roman territory, the western provinces, in which Britain was included, fell to Maximian. It was during his reign that Britain, by an extraordinary revolution, was for some time entirely separated from the body of the empire. Carausius, a man of obscure birth, and a barbarian, (for now not only the army but the senate was filled with foreigners,) had obtained the government of Boulogne. He was also intrusted with the command of a fleet, stationed in that part to oppose the Saxon pirates, who then began cruelly to infest the north-west parts of Gaul and the opposite shore of Britain. But Carausius made use of the power with which he had been intrusted, not so much to suppress the pirates, as to aggrandize himself. He even permitted their depredations, that he might intercept them on their return, and enrich himself with the retaken plunder. By such methods he acquired immense wealth, which he distributed with so politic a bounty among

the seamen of his fleet, and the legions in Britain, that by degrees he disposed both the one and the other to a revolt in his favour.

As there were then no settled principles either of succession or election in the empire, and all depended on the uncertain faith of the army, Carausius made his attempt, perhaps, with the less guilt, and found the less difficulty in prevailing upon the provincial Britons to submit to a sovereignty, which seemed to reflect a sort of dignity on themselves. In this island he established the seat of his new dominion, but he kept up and augmented his fleet, by which he preserved his communication with his old government, and commanded the intermediate seas. He entered into a close alliance with the Saxons and Frisians, A. D. 286. by which he at once preserved his own island from their depredations, and rendered his maritime power irresistible. He humbled the Picts by several defeats; he repaired the frontier wall, and supplied it with good garrisons. He made several roads equal to the works of the greatest emperors. He cut canals with vast labour and expense through all the low eastern parts of Britain; at the same time draining those fenny countries, and promoting communication and commerce. On these canals he built several cities. Whilst he thus laboured to promote the internal A. D. 290. strength and happiness of his kingdom, he contended with so much success against his former masters, that they were at length obliged not only to relinquish their right to his acquisition, but to admit him to a participation of the imperial titles. He reigned after this for seven years prosperously, and with great glory, because he wisely set bounds to his ambition, and contented himself with the possession of a great country, detached from the rest of the world, and therefore easily defended. Had he lived long enough, and pursued this plan with consistency, Britain, in all probability, might then have become, and might have afterwards been, an independent and powerful kingdom, instructed in the Roman arts, and freed from their dominion. But the same distemper of the state which had raised Carausius to power, did not suffer him long to enjoy it. The Roman soldiery at that time was wholly destitute of military principle. That religious regard to their oath, the great bond of ancient discipline,

had long worn out; and the want of it was not supplied by that punctilio of honour and loyalty which is the support of modern armies. Carausius was assassinated, and succeeded in his kingdom by Alectus, the captain of his guards. But the murderer, who did not possess abilities to support the power he had acquired by his crimes, was in a short time defeated, and in his turn put to death by Constantius Clorus. In about three years from the death of Carausius, Britain, after a short experiment of independency, was again united to the body of the empire.

A. D. 293.

Constantius, after he came to the purple, chose this island for his residence. Many authors affirm that his wife Helena was a Briton. It is more certain that his son Constantine the Great was born here, and enabled to succeed his father principally by the helps which he derived from Britain.

A. D. 304.

Under the reign of this great prince there was an almost total revolution in the internal policy of the empire. This was the third remarkable change in the Roman government since the dissolution of the commonwealth. The first was that by which Antoninus had taken away the distinctions of the *municipium*, province, and colony, communicating to every part of the empire those privileges which had formerly distinguished a citizen of Rome. Thus the whole government was cast into a more uniform and simple frame, and every mark of conquest was finally effaced. The second alteration was the division of the empire by Dioclesian. The third was the change made in the great offices of the state, and the revolution in religion under Constantine.

A. D. 306.

The *præfecti prætorio*, who, like the commanders of the Janizaries of the Porte, by their ambition and turbulence had kept the government in continual ferment, were reduced by the happiest art imaginable. Their number, only two originally, was increased to four, by which their power was balanced and broken. Their authority was not lessened, but its nature was totally changed; for it became from that time a dignity and office merely civil. The whole empire was divided into four departments under these four officers. The subordinate districts were governed by their *vicarii;* and Britain accordingly was under a vicar, subject to the *præfectus*

prætorio of Gaul. The military was divided nearly in the same manner; and it was placed under officers also of a new creation, the *magistri militiæ*. Immediately under these were the *duces*, and under those the *comites*, dukes and counts, titles unknown in the time of the republic, or in the higher empire; but afterwards they extended beyond the Roman territory, and having been conferred by the northern nations upon their leaders, they subsist to this day, and contribute to the dignity of the modern courts of Europe.

But Constantine made a much greater change with regard to religion by the establishment of Christianity. At what time the gospel was first preached in this island, I believe it impossible to ascertain; as it came in gradually, and without, or rather contrary to, public authority. It was most probably first introduced among the legionary soldiers; for we find St. Alban, the British martyr, to have been of that body. As it was introduced privately, so its growth was for a long time insensible; but it shot up at length with great vigour, and spread itself widely at first under the favour of Constantius, and the protection of Helena, and at length under the establishment of Constantine. From this time it is to be considered as the ruling religion; though heathenism subsisted long after, and at last expired imperceptibly, and with as little noise as Christianity had been at first introduced.

In this state, with regard to the civil, military, and religious establishment, Britain remained without any change, and at intervals in a tolerable state of repose, until the reign of Valentinian. Then it was attacked all at once with incredible fury and success, and as it were in concert, by a number of barbarous nations. The principal of these were the Scots, a people of ancient settlement in Ireland, and who had then been transplanted into the northern part of Britain, which afterwards derived its name from that colony. The Scots of both nations united with the Picts to fall upon the Roman province. To these were added the piratical Saxons, who issued from the mouths of the Rhine. For some years they met but slight resistance, and made a most miserable havoc, until the famous Count Theodosius was sent to the relief of Britain; who, by an admirable conduct in war, and as vigorous application to the cure of domestic disorders, for a time freed the country from

A. D. 364.

its enemies and oppressors; and having driven the Picts and Scots into the barren extremity of the island, he shut and barred them in with a new wall, advanced as far as the remotest of the former; and, what had hitherto been imprudently neglected, he erected the intermediate space into a Roman province, and a regular government, under the name of Valentia. But this was only a momentary relief. The empire was perishing by the vices of its constitution.

A. D. 368.

Each province was then possessed by the inconsiderate ambition of appointing a head to the whole; although when the end was obtained, the victorious province always returned to its ancient insignificance, and was lost in the common slavery. A great army of Britons followed the fortune of Maximus, whom they had raised to the imperial titles, into Gaul. They were there defeated; and from their defeat, as it is said, arose a new people. They are supposed to have settled in Armorica, which was then, like many other parts of the sickly empire, become a mere desert; and that country, from this accident, has been since called Bretagne.

A. D. 388.

The Roman province thus weakened afforded opportunity and encouragement to the barbarians again to invade and ravage it. Stilico, indeed, during the minority of Honorius, obtained some advantages over them, which procured a short intermission of their hostilities. But as the empire on the continent was now attacked on all sides, and staggered under the innumerable shocks which it received, that minister ventured to recall the Roman forces from Britain, in order to sustain those parts which he judged of more importance, and in greater danger.

A. D. 411.

On the intelligence of this desertion their barbarous enemies break in upon the Britons, and are no longer resisted. Their ancient protection withdrawn, the people became stupified with terror and despair. They petition the emperor for succour in the most moving terms. The emperor, protesting his weakness, commits them to their own defence, absolves them from their allegiance, and confers on them a freedom, which they have no longer the sense to value, nor the virtue to defend. The princes, whom after this desertion they raised and deposed with a

stupid inconstancy, were styled emperors. So hard it is to change ideas to which men have been long accustomed, especially in government, that the Britons had no notion of a sovereign who was not to be emperor, nor of an emperor who was not to be master of the western world. This single idea ruined Britain. Constantine, a native of this island, one of those shadows of imperial majesty, no sooner found himself established at home, than, fatally for himself and his country, he turned his eyes towards the continent. Thither he carried the flower of the British youth; all who were any ways eminent for birth, for courage, for their skill in the military or mechanic arts: but his success was not equal to his hopes or his forces. The remains of his routed army joined their countrymen in Armorica, and a baffled attempt upon the empire a second time recruited Gaul and exhausted Britain.

The Scots and Picts, attentive to every advantage, rushed with redoubled violence into this vacuity. The Britons, who could find no protection but in slavery, again implore the assistance of their former masters. At that time Ætius commanded the imperial forces in Gaul, and, with the virtue and military skill of the ancient Romans, supported the empire, tottering with age and weakness. Though he was then hard pressed by the vast armies of Attila, which like a deluge had overspread Gaul, he afforded them a small and temporary succour. This detachment of Romans repelled the Scots; they repaired the walls; and, animating the Britons by their example and instructions to maintain their freedom, they departed. But the Scots easily perceived and took advantage of their departure. Whilst they ravaged the country, the Britons renewed their supplications to Ætius. They once more obtained a reinforcement, which again re-established their affairs. They were, however, given to understand that this was to be their last relief. The Roman auxiliaries were recalled, and the Britons abandoned to their own fortune for ever.

When the Romans deserted this island they left a country, with regard to the arts of war or government, in a manner barbarous, but destitute of that spirit, or those advantages, with which sometimes a state of barbarism is attended. They carried out of each province its proper and natural strength, and supplied by that of some A. D. 432.

other, which had no connexion with the country. The troops raised in Britain often served in Egypt; and those which were employed for the protection of this island were sometimes from Batavia or Germany; sometimes from provinces far to the east. Whenever the strangers were withdrawn, as they were very easily, the province was left in the hands of men wholly unpractised in war. After a peaceable possession of more than three hundred years, the Britons derived but very few benefits from their subjection to the conquerors and civilizers of mankind. Neither does it appear that the Roman people were at any time extremely numerous in this island, or had spread themselves, their manners, or their language, as extensively in Britain as they had done in the other parts of their empire. The Welsh and the Anglo-Saxon languages retain much less of Latin than the French, the Spanish, or the Italian. The Romans subdued Britain at a later period; at a time when Italy herself was not sufficiently populous to supply so remote a province; she was rather supplied from her provinces. The military colonies, though in some respects they were admirably fitted for their purposes, had, however, one essential defect: the lands granted to the soldiers did not pass to their posterity; so that the Roman people must have multiplied poorly in this island, when their increase principally depended on a succession of superannuated soldiers. From this defect the colonies were continually falling to decay. They had also in many respects degenerated from their primitive institution.[1] We must add, that in the decline of the empire a great part of the troops in Britain were barbarians, Batavians, or Germans. Thus, at the close of this period, this unhappy country, desolated of its inhabitants, abandoned by its masters, stripped of its artisans, and deprived of all its spirit, was in a condition the most wretched and forlorn.

[1] *Neque conjugiis suscipiendis neque alendis liberis sueti, orbas sine posteris domos relinquebant. Non enim, ut olim universæ legiones, cum tribunis et centurionibus, et suis cujusque ordinis militibus, ut consensu et caritate rempublicam efficerent, sed ignoti inter se, diversis manipulis, sine rectore, sine affectibus mutuis, quasi ex alio genere mortalium, repente in unum collecti, numerus magis quam colonia.* Tacit. Annal. xiv. 27.

BOOK II.—CHAPTER I.

THE ENTRY AND SETTLEMENT OF THE SAXONS, AND THEIR CONVERSION TO CHRISTIANITY.

AFTER having been so long subject to a foreign dominion, there was among the Britons A. D. 447. no royal family, no respected order in the state, none of those titles to government confirmed by opinion and long use, more efficacious than the wisest schemes for the settlement of the nation. Mere personal merit was then the only pretence to power. But this circumstance only added to the misfortunes of a people, who had no orderly method of election, and little experience of merit in any of the candidates. During this anarchy, whilst they suffered the most dreadful calamities from the fury of barbarous nations which invaded them, they fell into that disregard of religion, and those loose, disorderly manners, which are sometimes the consequence of desperate and hardened wretchedness, as well as the common distempers of ease and prosperity.

At length, after frequent elections and deposings, rather wearied out by their own inconstancy than fixed by the merit of their choice, they suffered Vortigern to reign over them. This leader had made some figure in the conduct of their wars and factions. But he was no sooner settled on the throne than he showed himself rather like a prince born of an exhausted stock of royalty in the decline of empire, than one of those bold and active spirits, whose manly talents obtain them the first place in their country, and stamp upon it that character of vigour essential to the prosperity of a new commonwealth. However, the mere settlement, in spite of the ill administration of government, procured the Britons some internal repose, and some temporary advantages over their enemies the Picts. But having been long habituated to defeats, neither relying on their king nor on themselves, and fatigued with the obstinate attacks of an enemy whom they sometimes checked, but could never remove, in one of their national assemblies it was resolved to call in the mercenary aid of the Saxons, a powerful nation of Germany, which had been long by their piratical incursions terrible not only to them but to all the adjacent countries. This resolu-

tion has been generally condemned. It has been said that they seem to have through mere cowardice distrusted a strength not yet worn down, and a fortune sufficiently prosperous. But as it was taken by general counsel and consent, we must believe that the necessity of such a step was felt, though the event was dubious. The event, indeed, might be dubious; in a state radically weak, every measure vigorous enough for its protection must endanger its existence.

There is an unquestioned tradition among the northern nations of Europe, importing, that all that part of the world had suffered a great and general revolution by a migration from Asiatic Tartary of a people whom they call Asers. These everywhere expelled or subdued the ancient inhabitants of the Celtic and Cimbric original. The leader of this Asiatic army was called Odin, or Wodin; first their general, afterwards their tutelar deity. The time of this great change is lost in the imperfection of traditionary history, and the attempts to supply it by fable. It is however certain that the Saxon nation believed themselves the descendants of those conquerors; and they had as good a title to that descent as any other of the northern tribes; for they used the same language which then was, and is still, spoken with small variation of the dialects in all the countries which extend from the polar circle to the Danube. This people most probably derived their name, as well as their origin, from the Sacæ, a nation of the Asiatic Scythia. At the time of which we write, they had seated themselves in the Cimbric Chersonesus, or Jutland, in the countries of Holstein and Sleswick, and thence extended along the Elbe and Weser to the coast of the German Ocean, as far as the mouths of the Rhine. In that tract they lived in a sort of military commonwealth of the ordinary German model under several leaders, the most eminent of whom was Hengist, descended from Odin, the great conductor of the Asiatic colonies. It was to this chief that the Britons applied themselves. They invited him by a promise of ample pay for his troops, a large share of their common plunder, and the Isle of Thanet for a settlement.

The army which came over under Hengist did not exceed fifteen hundred men. The opinion which the Britons had entertained of the Saxon prowess was well founded; for they had the principal share in a decisive victory which was

obtained over the Picts soon after their arrival—a victory, which for ever freed the Britons from all terror of the Picts and Scots, but in the same moment exposed them to an enemy no less dangerous.

Hengist and his Saxons, who had obtained by the free vote of the Britons that introduction into this island they had so long in vain attempted by arms, saw that by being necessary they were superior to their allies. They discovered the character of the king; they were eye-witnesses of the internal weakness and distraction of the kingdom. This state of Britain was represented with so much effect to the Saxons in Germany, that another and much greater embarkation followed the first; new bodies daily crowded in. As soon as the Saxons began to be sensible of their strength, they found it their interest to be discontented; they complained of breaches of a contract which they construed according to their own designs; and then fell rudely upon their unprepared and feeble allies, who, as they had not been able to resist the Picts and Scots, were still less in a condition to oppose that force by which they had been protected against those enemies, when turned unexpectedly upon themselves. Hengist with very little opposition subdued the province of Kent, and there laid the foundation of the first Saxon kingdom. Every battle the Britons fought only prepared them for a new defeat by weakening their strength, and displaying the inferiority of their courage. Vortigern, instead of a steady and regular resistance, opposed a mixture of timid war and unable negotiation. In one of their meetings, wherein the business according to the German mode was carried on amidst feasting and riot, Vortigern was struck with the beauty of a Saxon virgin, a kinswoman of Hengist, and entirely under his influence. Having married her, he delivered himself over to her counsels.

His people, harassed by their enemies, betrayed by their prince, and indignant at the feeble tyranny that oppressed them, deposed him and set his son Vortimer in his place. But the change of the king proved no remedy for the exhausted state of the nation, and the constitutional infirmity of the government. For even if the Britons could have supported themselves against the superior abilities and efforts of Hengist, it might have added

A. D. 452.

to their honour, but would have contributed little to their safety. The news of his success had roused all Saxony. Five great bodies of that adventurous people, under different and independent commanders, very nearly at the same time broke in upon as many different parts of the island. They came no longer as pirates, but as invaders. Whilst the Britons contended with one body of their fierce enemies, another gained ground, and filled with slaughter the whole country from sea to sea. A devouring war, a dreadful famine, a plague, the most wasteful of any recorded in our history, united to consummate the ruin of Britain. The ecclesiastical writers of that age, confounded at the view of those complicated calamities, saw nothing but the arm of God stretched out for the punishment of a sinful and disobedient nation. And truly, when we set before us in one point of view the condition of almost all the parts which had lately composed the western empire of Britain, of Gaul, of Italy, of Spain, of Africa, at once overwhelmed by a resistless inundation of most cruel barbarians, whose inhuman method of war made but a small part of the miseries with which these nations were afflicted, we are almost driven out of the circle of political inquiry: we are in a manner compelled to acknowledge the hand of God in those immense revolutions by which at certain periods he so signally asserts his supreme dominion, and brings about that great system of change, which is, perhaps, as necessary to the moral as it is found to be in the natural world.

But whatever was the condition of the other parts of Europe, it is generally agreed that the state of Britain was the worst of all. Some writers have asserted that except those who took refuge in the mountains of Wales and Cornwall, or fled into Armorica, the British race was in a manner destroyed. What is extraordinary, we find England in a very tolerable state of population in less than two centuries after the first invasion of the Saxons; and it is hard to imagine either the transplantation, or the increase, of that single people to have been, in so short a time, sufficient for the settlement of so great an extent of country. Others speak of the Britons, not as extirpated, but as reduced to a state of slavery; and here these writers fix the origin of personal and predial servitude in England.

I shall lay fairly before the reader all I have been able to discover concerning the existence or condition of this unhappy people. That they were much more broken and reduced than any other nation which had fallen under the German power, I think may be inferred from two considerations: first, that in all other parts of Europe the ancient language subsisted after the conquest, and at length incorporated with that of the conquerors: whereas in England the Saxon language received little or no tincture from the Welsh; and it seems, even among the lowest people, to have continued a dialect of pure Teutonic to the time in which it was itself blended with the Norman. Secondly, that on the continent the Christian religion, after the northern irruptions, not only remained, but flourished. It was very early and universally adopted by the ruling people. In England it was so entirely extinguished, that, when Augustin undertook his mission, it does not appear that among all the Saxons there was a single person professing Christianity.

The sudden extinction of the ancient religion and language appears sufficient to show that Britain must have suffered more than any of the neighbouring nations on the continent. But it must not be concealed that there are likewise proofs, that the British race, though much diminished, was not wholly extirpated; and that those who remained were not, merely as Britons, reduced to servitude. For they are mentioned as existing in some of the earlier Saxon laws. In these laws they are allowed a compensation on the footing of the meaner kind of English; and they are even permitted, as well as the English, to emerge out of that low rank into a more liberal condition. This is degradation, but not slavery.[1] The affairs of that whole period are, however, covered with an obscurity not to be dissipated. The Britons had little leisure, or ability, to write a just account of a war by which they were ruined. And the Anglo-Saxons who succeeded them, attentive only to arms, were, until their conversion, ignorant of the use of letters. A. D. 500.

It is on this darkened theatre that some old writers have introduced those characters and actions which have afforded such ample matter to poets, and so much perplexity to historians. This is the fabulous and heroic age of our nation.

[1] *Leges Inæ* 32 *de Cambrico homine agrum possidente. Id.* 54

After the natural and just representations of the Roman scene, the stage is again crowded with enchanters, giants, and all the extravagant images of the wildest and most remote antiquity. No personage makes so conspicuous a figure in these stories as King Arthur; a prince whether of British or Roman origin, whether born on this island or in Armorica, is uncertain; but it appears that he opposed the Saxons with remarkable virtue, and no small degree of success, which has rendered him and his exploits so large an argument of romance, that both are almost disclaimed by history. Light scarce begins to dawn until the introduction of Christianity; which, bringing with it the use of letters and the arts of civil life, affords at once a juster account of things and facts that are more worthy of relation; nor is there, indeed, any revolution so remarkable in the English story.

The bishops of Rome had for some time meditated the conversion of the Anglo-Saxons. Pope Gregory, who is surnamed the Great, affected that pious design with an uncommon zeal; and he at length found a circumstance highly favourable to it in the marriage of a daughter of Charibert, a king of the Franks, to the reigning monarch of Kent. This opportunity induced Pope Gregory to commission Augustin, a monk of Rheims, and a man of distinguished piety, to undertake this arduous enterprise.

A. D. 600. It was in the year of Christ 600, and 150 years after the coming of the first Saxon colonies into England, that Ethelbert, king of Kent, received intelligence of the arrival in his dominions of a number of men in a foreign garb, practising several strange and unusual ceremonies, who desired to be conducted to the king's presence, declaring, that they had things to communicate to him and to his people, of the utmost importance to their eternal welfare. This was Augustin with forty of the associates of his mission, who now landed in the Isle of Thanet, the same place by which the Saxons had before entered, when they extirpated Christianity.

The king heard them in the open air, in order to defeat,[1] upon a principle of Druidical superstition, the effects of their enchantments. Augustin spoke by a Frankish interpreter. The Franks and Saxons were of the same origin, and used at

[1] *Veteri usus augurio*, says Henry of Huntingdon, p. 321.

that time the same language. He was favourably received; and a place in the city of Canterbury, the capital of Kent, was allotted for the residence of him and his companions. They entered Canterbury in procession, preceded by two persons who bore a silver cross and the figure of Christ painted on a board; singing as they went litanies to avert the wrath of God from that city and people.

The king was among their first converts. The principal of his nobility, as usual, followed that example; moved, as it is related, by many signal miracles, but undoubtedly by the extraordinary zeal of the missionaries, and the pious austerity of their lives. The new religion, by the protection of so respected a prince, who held under his dominion or influence all the countries to the southward of the Humber, spread itself with great rapidity. Paganism, after a faint resistance, everywhere gave way. And, indeed, the chief difficulties which Christianity had to encounter, did not arise so much from the struggles of opposite religious prejudices, as from the gross and licentious manners of a barbarous people. One of the Saxon princes expelled the Christians from his territory, because the priest refused to give him some of that white bread which he saw distributed to his congregation.

It is probable that the order of Druids either did not at all subsist amongst the Anglo-Saxons, or that at this time it had declined not a little from its ancient authority and reputation; else it is not easy to conceive how they admitted so readily a new system, which at one stroke cut off from their character its whole importance. We even find some chiefs of the pagan priesthood amongst the foremost in submitting to the new doctrine. On the first preaching of the gospel in Northumberland, the heathen pontiff of that territory immediately mounted a horse, which to those of his order was unlawful, and, breaking into the sacred enclosure, hewed to pieces the idol he had so long served.[1]

If the order of the Druids did not subsist amongst the Saxons, yet the chief objects of their religion appear to have been derived from that fountain. They indeed worshipped several idols under various forms of men and beasts; and those gods to whom they dedicated the days of the week,

[1] Bede Hist. Eccl. l. ii. c. 13.

bore in their attributes, and in the particular days that were consecrated to them, though not in their names, a near resemblance to the divinities of ancient Rome. But still the great and capital objects of their worship were taken from Druidism; trees, stones, the elements, and the heavenly bodies.[1] These were their principal devotions, laid the strongest hold upon their minds, and resisted the progress of the Christian religion with the greatest obstinacy. For we find these superstitions forbidden amongst the latest Saxon laws. A worship which stands in need of the memorial of images or books to support it, may perish when these are destroyed. But when a superstition is established upon those great objects of nature, which continually solicit the senses, it is extremely difficult to turn the mind from things, that in themselves are striking, and that are always present. Amongst the objects of this class must be reckoned the goddess Eostre, who, from the etymology of the name, as well as from the season sacred to her, was probably that beautiful planet which the Greeks and Romans worshipped under the names of Lucifer and Venus. It is from this goddess that in England the Paschal festival has been called Easter.[2] To these they joined the reverence of various subordinate genii, or demons, fairies, and goblins; fantastical ideas, which in a state of uninstructed nature grow spontaneously out of the wild fancies or fears of men. Thus they worshipped a sort of goddess whom they called Mara, formed from those frightful appearances that oppress men in their sleep; and the name is still retained among us.[3]

As to the manners of the Anglo-Saxons, they were such as might be expected in a rude people; fierce, and of a gross simplicity. Their clothes were short. As all barbarians are much taken with exterior form, and the advantages and distinctions which are conferred by nature, the Saxons set a high value on comeliness of person, and studied much to improve it. It is remarkable that a law of King Ina orders the care and education of foundlings to be regulated by their

[1] *Gentiles Deos; et solem vel lunam; ignem vel fluvium; torrentem vel saxa; vel alicujus generis arborum ligna. L. Cnut.* 5. *Superstitiosus ille conventus, qui Frithgear dicitur, circa lapidem, arborem, fontem.* Leg Presb. Northumb.

[2] Spelman's Glossary, Tit. eod

[3] *The Night-mare.*

beauty.[1] They cherished their hair to a great length, and were extremely proud and jealous of this natural ornament. Some of their great men were distinguished by an appellative taken from the length of their hair.[2] To pull the hair was punishable;[3] and forcibly to cut or injure it was considered in the same criminal light with cutting off the nose, or thrusting out the eyes. In the same design of barbarous ornament, their faces were generally painted and scarred. They were so fond of chains and bracelets, that they have given a surname to some of their kings from their generosity in bestowing such marks of favour.[4]

Few things discover the state of the arts amongst people more certainly than the presents that are made to them by foreigners. The pope, on his first mission into Northumberland, sent to the queen of that country some stuffs with ornaments of gold, an ivory comb inlaid with the same metal, and a silver mirror. A queen's want of such female ornaments and utensils shows that the arts were at this time little cultivated amongst the Saxons. These are the sort of presents commonly sent to a barbarous people.

Thus ignorant in sciences and arts, and unpractised in trade or manufacture, military exercises, war, and the preparation for war, was their employment, hunting their pleasure. They dwelt in cottages of wicker-work, plastered with clay, and thatched with rushes, where they sat with their families, their officers and domestics, round a fire made in the middle of the house. In this manner their greatest princes lived amidst the ruins of Roman magnificence. But the introduction of Christianity, which, under whatever form, always confers such inestimable benefits on mankind, soon made a sensible change in these rude and fierce manners.

It is by no means impossible, that, for an end so worthy, Providence on some occasions might directly have interposed. The books which contain the history of this time and change are little else than a narrative of miracles; frequently, however, with such apparent marks of weakness or design, that they afford little encouragement to insist on

[1] L. Inæ 19. [2] *Oslacus promissâ cæsarie heros.* Chron. Saxon. 123.
[3] L. Elfred. 42, L. Cnut. apud Brompt. 21.
[4] *Edgarus nobilibus torquium largitor.* Chron. Sax. 123. Bed. Hist Eccl. l. iv. c. 29.

them. They were then received with a blind credulity; they have been since rejected with as undistinguishing a disregard. But as it is not in my design, nor inclination, nor indeed in my power, either to establish or refute these stories, it is sufficient to observe that the reality or opinion of such miracles was the principal cause of the early acceptance and rapid progress of Christianity in this island. Other causes undoubtedly concurred: and it will be more to our purpose to consider some of the human and politic ways, by which religion was advanced in this nation; and those more particularly, by which the monastic institution, then interwoven with Christianity, and making an equal progress with it, attained to so high a pitch of property and power; so as, in a time extremely short, to form a kind of order, and that not the least considerable, in the state.

CHAPTER II.

ESTABLISHMENT OF CHRISTIANITY—OF MONASTIC INSTITUTIONS —AND OF THEIR EFFECTS.

THE marriage of Ethelbert to a Christian princess was, we have seen, a means of introducing Christianity into his dominions. The same influence contributed to extend it in the other kingdoms of the heptarchy, the sovereigns of which were generally converted by their wives. Among the ancient nations of Germany the female sex was possessed not only of its natural and common ascendant, but it was believed peculiarly sacred,[1] and favoured with more frequent revelations of the Divine will; women were, therefore, heard with an uncommon attention in all deliberations, and particularly in those that regarded religion. The pagan superstition of the North furnished, in this instance, a principle, which contributed to its own destruction.

In the change of religion, care was taken to render the transaction from falsehood to truth as little violent as possible. Though the first proselytes were kings, it does not ap-

[1] *Inesse quinetiam sanctum aliquid et providum putant; nec aut consilia earum aspernantur aut responsa negligunt.* Tacit. de Mor. Ger. c. 8.

pear that there was any persecution. It was a precept of Pope Gregory, under whose auspices this mission was conducted, that the heathen temples should not be destroyed, especially where they were well built; but that, first removing the idols, they should be consecrated anew by holier rites and to better purposes,[1] in order that the prejudices of the people might not be too rudely shocked by a declared profanation of what they had so long held sacred; and that everywhere beholding the same places to which they had formerly resorted for religious comfort, they might be gradually reconciled to the new doctrines and ceremonies which were there introduced; and as the sacrifices used in the pagan worship were always attended with feasting, and consequently were highly grateful to the multitude, the pope ordered that oxen should as usual be slaughtered near the church, and the people indulged in their ancient festivity.[2] Whatever popular customs of heathenism were found to be absolutely not incompatible with Christianity were retained; and some of them were continued to a very late period. Deer were at a certain season brought into St. Paul's church in London, and laid on the altar;[3] and this custom subsisted until the Reformation. The names of some of the church festivals were, with a similar design, taken from those of the heathen, which had been celebrated at the same time of the year. Nothing could have been more prudent than these regulations; they were indeed formed from a perfect understanding of human nature.

Whilst the inferior people were thus insensibly led into a better order, the example and countenance of the great completed the work. For the Saxon kings and ruling men embraced religion with so signal, and in their rank so unusual, a zeal, that in many instances they even sacrificed to its advancement the prime objects of their ambition. Wulfere, king of the West Saxons, bestowed the Isle of Wight on the king of Sussex, to persuade him to embrace Christianity.[4] This zeal operated in the same manner in favour of their instructors. The greatest kings and conquerors frequently resigned their crowns, and shut themselves up in monasteries. When kings became monks, a high lustre was reflected upon the monastic state, and great credit accrued to the

[1] Bed. Hist. Eccl. l. i. c. 30.
[2] Id. c. eod.
[3] Dugdale's History of St Paul's.
[4] Bed. Hist. Eccl. l. iv. c. 13.

power of their doctrine, which was able to produce such extraordinary effects upon persons over whom religion has commonly the slightest influence.

The zeal of the missionaries was also much assisted by their superiority in the arts of civil life. At their first preaching in Sussex, that country was reduced to the greatest distress from a drought which had continued for three years. The barbarous inhabitants, destitute of any means to alleviate the famine, in an epidemic transport of despair frequently united forty and fifty in a body, and joining their hands, precipitated themselves from the cliffs, and were either drowned or dashed to pieces on the rocks. Though a maritime people they knew not how to fish; and this ignorance probably arose from a remnant of Druidical superstition, which had forbidden the use of that sort of diet. In this calamity, Bishop Wilfred, their first preacher, collecting nets, at the head of his attendants plunged into the sea; and having opened this great resource of food, he reconciled the desperate people to life, and their minds to the spiritual care of those, who had shown themselves so attentive to their temporal preservation.[1]

The same regard to the welfare of the people appeared in all their actions. The Christian kings sometimes made donations to the church of lands conquered from their heathen enemies. The clergy immediately baptized and manumitted their new vassals. Thus they endeared to all sorts of men doctrines and teachers, which could mitigate the rigorous law of conquest; and they rejoiced to see religion and liberty advancing with an equal progress. Nor were the monks of this time in anything more worthy of praise than in their zeal for personal freedom. In the canon, wherein they provided against the alienation of their lands, among other charitable exceptions to this restraint they particularize the purchase of liberty.[2] In their transactions with the great the same point was always strenuously laboured. When they imposed penance, they were remarkably indulgent to persons of that rank. But they always made them purchase the remission of corporal austerity by acts of beneficence. They urged their powerful penitents to the enfranchisement of their own slaves, and to the redemption of those which

[1] Bed. Hist. Eccl. l iv. c. 13. [2] Spelm. Concil. p. 329.

belonged to others; they directed them to the repair of highways, and to the construction of churches, bridges, and other works of general utility.[1] They extracted the fruits of virtue even from crimes, and whenever a great man expiated his private offences, he provided in the same act for the public happiness. The monasteries were then the only bodies corporate in the kingdom; and if any persons were desirous to perpetuate their charity by a fund for the relief of the sick or indigent, there was no other way than to confide this trust to some monastery. The monks were the sole channel through which the bounty of the rich could pass in any continued stream to the poor; and the people turned their eyes towards them in all their distresses.

We must observe, that the monks of that time, especially those from Ireland,[2] who had a considerable share in the conversion of all the northern parts, did not show that rapacious desire of riches, which long disgraced, and finally ruined, their successors. Not only did they not seek, but seemed even to shun, such donations. This prevented that alarm which might have arisen from an early and declared avarice. At this time the most fervent and holy anchorites retired to places the furthest that could be found from human concourse and help, to the most desolate and barren situations, which even from their horror seemed particularly adapted to men who had renounced the world. Many persons followed them in order to partake of their instructions and prayers, or to form themselves upon their example. An opinion of their miracles after their death drew still greater numbers. Establishments were gradually made. The monastic life was frugal, and the government moderate. These causes drew a constant concourse. Sanctified deserts assumed a new face; the marshes were drained, and the lands cultivated. And as this revolution seemed rather the effect of the holiness of the place than of any natural causes, it increased their credit;

[1] *Instauret etiam Dei ecclesiam; et instauret vias publicas, pontibus super aquas profundas et super cænosas vias; et manumittat servos suos proprios, et redimat ab aliis hominibus servos suos ad libertatem.* L. Eccl. Edgari 14.

[2] *Aidanus Finam et Colmanus miræ sanctitatis fuerunt et parsimoniæ. Adeo enim sacerdotes erant illius temporis ab avaritiâ immunes, ut nec territoria nisi coacti acciperent.* Hen. Hunting. apud Decem. l. iii. p. 333 Bed. Hist. Eccl. l. iii. c. 26.

and every improvement drew with it a new donation. In this manner the great abbeys of Croyland and Glastonbury, and many others, from the most obscure beginnings, were advanced to a degree of wealth and splendour little less than royal.

In these rude ages government was not yet fixed upon solid principles, and everything was full of tumult and distraction. As the monasteries were better secured from violence by their character, than any other places by laws, several great men, and even sovereign princes, were obliged to take refuge in convents; who, when by a more happy revolution in their fortunes they were reinstated in their former dignities, thought they could never make a sufficient return for the safety they had enjoyed under the sacred hospitality of these roofs. Not content to enrich them with ample possessions, that others also might partake of the protection they had experienced, they formally erected into an asylum those monasteries and their adjacent territory. So that all thronged to that refuge who were rendered unquiet by their crimes, their misfortunes, or the severity of their lords; and content to live under a government to which their minds were subject, they raised the importance of their masters by their numbers, their labour, and above all by an inviolable attachment.

The monastery was always the place of sepulture for the greatest lords and kings. This added to the other causes of reverence a sort of sanctity, which, in universal opinion, always attends the repositories of the dead; and they acquired also thereby a more particular protection against the great and powerful; for who would violate the tomb of his ancestors or his own? It was not an unnatural weakness to think that some advantage might be derived from lying in holy places, and amongst holy persons; and this superstition was fomented with the greatest industry and art. The monks of Glastonbury spread a notion, that it was almost impossible any person should be damned, whose body lay in their cemetery. This must be considered as coming in aid of the amplest of their resources, prayer for the dead.

But there was no part of their policy, of whatever nature, that procured to them a greater or juster credit, than their cultivation of learning and useful arts. For if the monks

contributed to the fall of science in the Roman empire, it is certain that the introduction of learning and civility into this northern world is entirely owing to their labours. It is true that they cultivated letters only in a secondary way, and as subsidiary to religion. But the scheme of Christianity is such, that it almost necessitates an attention to many kinds of learning. For the Scripture is by no means an irrelative system of moral and divine truths; but it stands connected with so many histories, and with the laws, opinions, and manners of so many various sorts of people, and in such different times, that it is altogether impossible to arrive to any tolerable knowledge of it, without having recourse to much exterior inquiry. For which reason the progress of this religion has always been marked by that of letters. There were two other circumstances at this time that contributed no less to the revival of learning. The sacred writings had not been translated into any vernacular language, and even the ordinary service of the church was still continued in the Latin tongue; all, therefore, who formed themselves for the ministry, and hoped to make any figure in it, were in a manner driven to the study of the writers of polite antiquity, in order to qualify themselves for their most ordinary functions. By this means a practice, liable in itself to great objections, had a considerable share in preserving the wrecks of literature; and was one means of conveying down to our times those inestimable monuments, which otherwise, in the tumult of barbarous confusion on one hand, and untaught piety on the other, must inevitably have perished. The second circumstance,—the pilgrimages of that age,—if considered in itself, was as liable to objection as the former; but it proved of equal advantage to the cause of literature. A principal object of these pious journeys was Rome, which contained all the little that was left in the Western world of ancient learning and taste. The other great object of those pilgrimages was Jerusalem; this led them into the Grecian empire, which still subsisted in the East with great majesty and power. Here the Greeks had not only not discontinued the ancient studies, but they added to the stock of arts many inventions of curiosity and convenience, that were unknown to antiquity. When, afterwards, the Saracens prevailed in that part of the

world, the pilgrims had also, by the same means, an opportunity of profiting from the improvements of that laborious people; and however little the majority of these pious travellers might have had such objects in their view, something useful must unavoidably have stuck to them; a few certainly saw with more discernment, and rendered their travels serviceable to their country by importing other things besides miracles and legends. Thus a communication was opened between this remote island and countries of which it otherwise could then scarcely have heard mention made; and pilgrimages thus preserved that intercourse amongst mankind, which is now formed by politics, commerce, and learned curiosity.

It is not wholly unworthy of observation, that Providence, which strongly appears to have intended the continual intermixture of mankind, never leaves the human mind destitute of a principle to effect it. This purpose is sometimes carried on by a sort of migratory instinct, sometimes by the spirit of conquest; at one time avarice drives men from their homes, at another they are actuated by a thirst of knowledge; where none of these causes can operate, the sanctity of particular places attracts men from the most distant quarters. It was this motive which sent thousands in those ages to Jerusalem and Rome; and now, in a full tide, impels half the world annually to Mecca.

By those voyages the seeds of various kinds of knowledge and improvement were at different times imported into England. They were cultivated in the leisure and retirement of monasteries; otherwise they could not have been cultivated at all: for it was altogether necessary to draw certain men from the general rude and fierce society, and wholly to set a bar between them and the barbarous life of the rest of the world, in order to fit them for study, and the cultivation of arts and science. Accordingly, we find everywhere, in the first institutions for the propagation of knowledge amongst any people, that those who followed it were set apart and secluded from the mass of the community.

The great ecclesiastical chair of this kingdom, for near a century, was filled by foreigners; they were nominated by the popes, who were in that age just or politic enough to appoint persons of a merit in some degree adequate to that

important charge. Through this series of foreign and learned prelates, continual accessions were made to the originally slender stock of English literature. The greatest and most valuable of these accessions was made in the time and by the care of Theodorus, the seventh archbishop of Canterbury. He was a Greek by birth; a man of a high, ambitious spirit, and of a mind more liberal, and talents better cultivated, than generally fell to the lot of the western prelates. He first introduced the study of his native language into this island. He brought with him a number of valuable books in many faculties; and amongst them a magnificent copy of the works of Homer, the most ancient and best of poets, and the best chosen to inspire a people, just initiated into letters, with an ardent love, and with a true taste, for the sciences. Under his influence a school was formed at Canterbury; and thus the other great fountain of knowledge, the Greek tongue, was opened in England in the year of our Lord 669. A. D. 669.

The southern parts of England received their improvements directly through the channel of Rome. The kingdom of Northumberland, as soon as it was converted, began to contend with the southern provinces in an emulation of piety and learning. The ecclesiastics then also kept up and profited by their intercourse with Rome; but they found their principal resources of knowledge from another and a more extraordinary quarter.[1] The island of Hii, or Columkill, is a small and barren rock in the Western ocean. But in those days it was high in reputation as the site of a monastery, which had acquired great renown for the rigour of its studies, and the severity of its ascetic discipline. Its authority was extended over all the northern parts of Britain and Ireland; and the monks of Hii even exercised episcopal jurisdiction over all those regions. They had a considerable share both in the religious and literate institution of the Northumbrians. Another island of still less importance, in the mouth of the Tees, and called Landisforn, was about this time sanctified by the austerities of a hermit called Cuthbert. It soon became also a very celebrated monastery. It was, from a dread of the ravages of pirates, removed first to the adjacent part of the continent, and on the same account finally to Durham. The heads of this monastery omitted nothing which could

[1] St. Columbus, or Icolmkill or Iona.

contribute to the glory of their founder and to the dignity of their house; which became in a very short time, by their assiduous endeavours, the most considerable school, perhaps, in Europe. The great and justest boast of this monastery is the venerable Beda, who was educated and spent his whole life there. An account of his writings is an account of the English learning in that age, taken in its most advantageous view. Many of his works remain, and he wrote both in prose and verse, and upon all sorts of subjects. His theology forms the most considerable part of his writings. He wrote comments upon almost the whole Scripture, and several homilies on the principal festivals of the church. Both the comments and sermons are generally allegorical in the construction of the text, and simply moral in the application. In these discourses several things seem strained and fanciful; but herein he followed entirely the manner of the earlier fathers, from whom the greatest part of his divinity is not so much imitated as extracted. The systematic and logical method, which seems to have been first introduced into theology by John of Damascus, and which afterwards was known by the name of school-divinity, was not then in use, at least in the Western church; though soon after it made an amazing progress. In this scheme the allegorical gave way to the literal explication; the imagination had less scope; and the affections were less touched. But it prevailed by an appearance more solid and philosophical; by an order more scientific; and by a readiness of application, either for the solution or the exciting of doubts and difficulties.

They also cultivated in this monastery the study of natural philosophy and astronomy. There remain of Beda one entire book, and some scattered essays on these subjects. This book, *de Rerum Naturâ*, is concise and methodical, and contains no very contemptible abstract of the physics which were taught in the decline of the Roman empire. It was somewhat unfortunate, that the infancy of English learning was supported by the dotage of the Roman, and that even the spring-head from whence they drew their instructions was itself corrupted. However, the works of the great masters of the ancient science still remained; but in natural philosophy the worst was the most fashionable. The Epicurean physics, the most approaching to rational, had long lost all credit by

being made the support of an impious theology and a loose morality. The fine visions of Plato fell into some discredit by the abuse which heretics had made of them; and the writings of Aristotle seem to have been then the only ones much regarded, even in natural philosophy, in which branch of science alone they are unworthy of him. Beda entirely follows this system. The appearances of nature are explained by matter and form, and by the four vulgar elements; acted upon by the four supposed qualities of hot, dry, moist, and cold. His astronomy is on the common system of the ancients; sufficient for the few purposes to which they applied it, but otherwise imperfect and grossly erroneous. He makes the moon larger than the earth; though a reflection on the nature of eclipses, which he understood, might have satisfied him of the contrary. But he had so much to copy, that he had little time to examine. These speculations, however erroneous, were still useful; for though men err in assigning the causes of natural operations, the works of nature are by this means brought under their consideration; which cannot be done without enlarging the mind. The science may be false, or frivolous; the improvement will be real. It may here be remarked, that soon afterwards the monks began to apply themselves to astronomy and chronology from the disputes which were carried on with so much heat, and so little effect, concerning the proper time of celebrating Easter; and the English owed the cultivation of these noble sciences to one of the most trivial controversies of ecclesiastic discipline. Beda did not confine his attention to those superior sciences. He treated of music, and of rhetoric, of grammar, and the art of versification, and of arithmetic, both by letters and on the fingers: and his work on this last subject is the only one in which that piece of antique curiosity has been preserved to us. All these are short pieces; some of them are in the catechetical method; and seemed designed for the immediate use of the pupils in his monastery, in order to furnish them with some leading ideas in the rudiments of these arts, then newly introduced into his country. He likewise made, and probably for the same purpose, a very ample and valuable collection of short philosophical, political, and moral maxims from Aristotle, Plato, Seneca, and other sages of heathen antiquity. He made a separate book of shining

common-places and remarkable passages, extracted from the works of Cicero, of whom he was a great admirer, though he seems to have been not a happy or diligent imitator in his style. From a view of these pieces, we may form an idea of what stock in the science the English at that time possessed; and what advances they had made. That work of Beda, which is the best known and most esteemed, is the Ecclesiastical History of the English Nation. Disgraced by a want of choice, and frequently by a confused ill disposition of his matter, and blemished with a degree of credulity next to infantine, it is still a valuable, and for the time a surprising, performance. The book opens with a description of this island, which would not have disgraced a classical author; and he has prefixed to it a chronological abridgment of sacred and profane history, connected from the beginning of the world; which, though not critically adapted to his main design, is of far more intrinsic value, and indeed displays a vast fund of historical erudition. On the whole, though this father of the English learning seems to have been but a genius of the middle class, neither elevated nor subtil, and one who wrote in a low style, simple, but not elegant, yet when we reflect upon the time in which he lived, the place in which he spent his whole life, within the walls of a monastery, in so remote and wild a country, it is impossible to refuse him the praise of an incredible industry and a generous thirst of knowledge.

That a nation, who not fifty years before had but just begun to emerge from a barbarism so perfect that they were unfurnished even with an alphabet, should, in so short a time, have established so flourishing a seminary of learning, and have produced so eminent a teacher, is a circumstance which I imagine no other nation besides England can boast.

Hitherto we have spoken only of their Latin and Greek literature. They cultivated also their native language, which, according to the opinions of the most adequate judges, was deficient neither in energy nor beauty, and was possessed of such a happy flexibility, as to be capable of expressing with grace and effect every new technical idea, introduced either by theology or science. They were fond of poetry; they sung at all their feasts; and it was counted extremely disgraceful not to be able to take a part in these performances,

even when they challenged each other to a sudden exertion of the poetic spirit. Caedmon, afterwards one of the most eminent of their poets, was disgraced in this manner into an exertion of a latent genius. He was desired in his turn to sing, but, being ignorant, and full of natural sensibility, retired in confusion from the company; and by instant and strenuous application soon became a distinguished proficient in the art.

CHAPTER III.

SERIES OF ANGLO-SAXON KINGS FROM ETHELBERT TO ALFRED; WITH THE INVASION OF THE DANES.

THE Christian religion having once taken root in Kent, spread itself with great rapidity throughout all the other Saxon kingdoms in England. The manners of the Saxons underwent a notable alteration by this change in their religion; their ferocity was much abated; they became more mild and sociable; and their laws began to partake of the softness of their manners, everywhere recommending mercy, and a tenderness for Christian blood. There never was any people who embraced religion with a more fervent zeal than the Anglo-Saxons, nor with more simplicity of spirit. Their history for a long time shows us a remarkable conflict between their dispositions and their principles. This conflict produced no medium, because they were absolutely contrary; and both operated with almost equal violence. Great crimes, and extravagant penances; rapine, and an entire resignation of worldly goods; rapes, and vows of perpetual chastity,—succeeded each other in the same persons. There was nothing which the violence of their passions could not induce them to commit; nothing to which they did not submit, to atone for their offences, when reflection gave an opportunity to repent. But by degrees the sanctions of religion began to preponderate; and as the monks at this time attracted all the religious veneration, religion everywhere began to relish of the cloister; an inactive spirit, and a spirit of scruples, prevailed; they dreaded to put the greatest criminal to death; they scrupled to engage in any worldly functions. A king of the Saxons dreaded that God would call him to an account for the time

which he spent in his temporal affairs, and had stolen from prayer. It was frequent for kings to go on pilgrimages to Rome or to Jerusalem, on foot, and under circumstances of great hardship. Several kings resigned their crowns to devote themselves to religious contemplation in monasteries—more at that time, and in this nation, than in all other nations, and in all times. This, as it introduced great mildness into the tempers of the people, made them less warlike, and consequently prepared the way to their forming one body under Egbert, and for the other changes which followed.

The kingdom of Wessex, by the wisdom and courage of King Ina, the greatest legislator and politician of those times, had swallowed up Cornwall, for a while a refuge for some of the old Britons, together with the little kingdom of the South Saxons. By this augmentation it stretched from the Land's End to the borders of Kent, the Thames flowing on the north, the ocean washing it on the south. By their situation the people of Wessex naturally came to engross the little trade which then fed the revenues of England; and their minds were somewhat opened by a foreign communication, by which they became more civilized, and better acquainted with the arts of war and of government. Such was the condition of the kingdom of Wessex, when Egbert was called to the throne of his ancestors. The civil commotions which for some time prevailed, had driven this prince early in life into a useful banishment. He was honourably received at the court of Charlemagne, where he had an opportunity of studying government in the best school, and of forming himself after the most perfect model. Whilst Charlemagne was reducing the continent of Europe into one empire, Egbert reduced England into one kingdom. The state of his own dominions, perfectly united under him, with the other advantages which we have just mentioned, and the state of the neighbouring Saxon governments, made this reduction less difficult. Besides Wessex, there were but two kingdoms of consideration in England,—Mercia and Northumberland. They were powerful enough in the advantages of nature, but reduced to great weakness by their divisions. As there is nothing of more moment to any country than to settle the succession of its government on clear and invariable principles, the Saxon monarchies, which were supported

A. D. 799.

by no such principles, were continually tottering. The right of government sometimes was considered as in the eldest son, sometimes in all; sometimes the will of the deceased prince disposed of the crown; sometimes a popular election bestowed it. The consequence of this was the frequent division and frequent reunion of the same territory, which were productive of infinite mischief: many various principles of succession gave titles to some, pretensions to more; and plots, cabals, and crimes could not be wanting to all the pretenders. Thus was Mercia torn to pieces; and the kingdom of Northumberland, assaulted on one side by the Scots, and ravaged on the other by the Danish incursions, could not recover from a long anarchy, into which its intestine divisions had plunged it. Egbert knew how to make advantage of these divisions; fomenting them by his policy at first, and quelling them afterwards by his sword, he reduced these two kingdoms under his government. The same power which conquered Mercia and Northumberland made the reduction of Kent and Essex easy: the people on all hands the more readily submitting, because there was no change made in their laws, manners, or the form of their government.

Egbert, when he had brought all England under his dominion, made the Welsh tributary, and carried his arms with success into Scotland, assumed the title of Monarch of all Britain.[1] The southern part of the island was now for the first time authentically known by the name of England, and by every appearance promised to have arrived at the fortunate moment for forming a permanent and splendid monarchy. But Egbert had not reigned seven years in peace, when the Danes, who had before showed themselves in some scattered parties, and made some inconsiderable descents, entered the kingdom in a formidable body. This people came from the same place whence the English themselves were derived, and they differed from them in little else, than that they still retained their original barbarity and heathenism. These, assisted by the Norwegians and other people of Scandinavia, were the last torrent of the northern ravagers which overflowed Europe. What is remarkable, they attacked England

Egbert. A. D. 827.

A. D. 832.

[1] No Saxon monarch until Athelstan

and France, when these two kingdoms were in the height of their grandeur; France under Charlemagne, England united by Egbert. The good fortune of Egbert met its first check from these people, who defeated his forces with great slaughter near Charmouth in Dorsetshire. It generally happens that a new nation, with a new method of making war, succeeds against a people only exercised in arms by their own civil dissensions. Besides, England, newly united, was not without those jealousies and that disaffection which give such great advantage to an invader. But the vigilance and courage of Egbert repaired this defeat; he repulsed the Danes; and died soon after at Winchester full of years and glory.

Ethelwolf. A. D. 838. He left a great, but an endangered, succession to his son Ethelwolf, who was a mild and virtuous prince, full of a timid piety, which utterly disqualifies for government; and he began to govern at a time when the greatest capacity was wanted. The Danes pour in upon every side; the king rouses from his lethargy; battles are fought with various success, which it were useless and tedious to recount. The event seems to have been, that in some corners of the kingdom the Danes gained a few inconsiderable settlements; the rest of the kingdom, after being terribly ravaged, was left a little time to recover, in order to be plundered anew. But the weak prince took no advantage of this time to concert a regular plan of defence, or to rouse a proper spirit in his people. Yielding himself wholly to speculative devotion, he entirely neglected his affairs; and, to complete the ruin of his kingdom, abandoned it, in such critical circumstances, to make a pilgrimage to Rome. At Rome he behaved in the manner that suited his little genius,—in making charitable foundations, and in extending the Romescot or Peter-pence, which the folly of some princes of the heptarchy had granted for their particular dominions, over the whole kingdom. His shameful desertion of his country raised so general a discontent, that, in his absence, his own son, with the principal of his nobility and bishops, conspired against him. At his return he found, however, that several still adhered to him; but here too, incapable of acting with vigour, he agreed to an accommodation, which placed the crown on the head of his rebellious son, and only left to himself a sphere of government as narrow as his genius,—the

district of Kent, whither he retired to enjoy an inglorious privacy with a wife whom he had married in France.

On his death his son Ethelred still held the crown, which he had pre-occupied by his rebellion and which he polluted with a new stain. He married his father's widow. The confused history of these times furnishes no clear account either of the successions of the kings or of their actions. During the reign of this prince and his successors Ethelbert and Ethelred, the people in several parts of England seemed to have withdrawn from the kingdom of Wessex, and to have revived their former independency. This, added to the weakness of the government, made way for new swarms of Danes, who burst in upon this ill-governed and divided people, ravaging the whole country in a terrible manner, but principally directing their fury against every monument of civility or piety. They had now formed a regular establishment in Northumberland, and gained a very considerable footing in Mercia and East Anglia; they hovered over every part of the kingdom with their fleets; and being established in many places in the heart of the country, nothing seemed able to resist them.

Ethelred. A. D. 866.

CHAPTER IV.

REIGN OF KING ALFRED.

It was in the midst of these distractions, that Alfred succeeded to a sceptre, which was threatened every moment to be wrenched from his hands. He was then only twenty-two years of age; but exercised from his infancy in troubles and in wars, that formed and displayed his virtue. Some of his best provinces were torn from his kingdom, which was shrunk to the ancient bounds of Wessex; and what remained was weakened by dissension, by a long war, by a raging pestilence, and surrounded by enemies, whose numbers seemed inexhaustible, and whose fury was equally increased by victories or defeats. All these difficulties served only to increase the vigour of his mind. He took the field without delay; but he was defeated with considerable loss. This ominous defeat displayed more fully the greatness of his

A. D. 871.

courage and capacity, which found in desperate hopes and a ruined kingdom such powerful resources. In a short time after he was in a condition to be respected; but he was not led away by the ambition of a young warrior. He neglected no measures to procure peace for his country, which wanted a respite from the calamities which had long oppressed it. A peace was concluded for Wessex. Then the Danes turned their faces once more towards Mercia and East Anglia. They had before stripped the inhabitants of all their movable substance, and now they proceeded without resistance to seize upon their lands. Their success encouraged new swarms of Danes to crowd over, who, finding all the northern parts of England possessed by their friends, rushed into Wessex. They were adventurers under different and independent leaders; and a peace, little regarded by the particular party that made it, had no influence at all upon the others. Alfred opposed this shock with so much firmness, that the barbarians had recourse to a stratagem: they pretended to treat; but, taking advantage of the truce, they routed a body of the West Saxon cavalry that were off their guard, mounted their horses, and, crossing the country with amazing celerity, surprised the city of Exeter. This was an acquisition of infinite advantage to their affairs, as it secured them a port in the midst of Wessex. Alfred, mortified at this series of misfortunes, perceived clearly that nothing could dislodge the Danes, or redress their continual incursions, but a powerful fleet, which might intercept them at sea. The want of this, principally, gave rise to the success of that people. They used suddenly to land and ravage a part of the country; when a force opposed them, they retired to their ships, and passed to some other part, which in a like manner they ravaged, and then retired as before, until the country, entirely harassed, pillaged, and wasted by these incursions, was no longer able to resist them. Then they ventured safely to enter a desolated and disheartened country, and to establish themselves in it. These considerations made Alfred resolve upon equipping a fleet; in this enterprise nothing but difficulties presented themselves; his revenue was scanty; and his subjects altogether unskilled in maritime affairs, either as to the construction or the navagation of ships. He did not therefore

A. D. 875.

despair. With great promises attending a little money, he engaged in his service a number of Frisian seamen, neighbours to the Danes, and pirates, as they were. He brought, by the same means, shipwrights from the continent. He was himself present to everything; and having performed the part of a king in drawing together supplies of every kind, he descended with no less dignity into the artist; improving on the construction; inventing new machines; and supplying by the greatness of his genius the defects and imperfections of the arts in that rude period. By his indefatigable application the first English navy was in a very short time in readiness to put to sea. At that time the Danish fleet of 125 ships stood with full sail for Exeter; they met; but, with an omen prosperous to the new naval power, the Danish fleet was entirely vanquished and dispersed. This success drew on the surrender of Exeter, and a peace, which Alfred much wanted, to put the affairs of his kingdom in order. This peace, however, did not last long. As the Danes were continually pouring into some part of England, they found most parts already in Danish hands; so that all these parties naturally directed their course to the only English kingdom. All the Danes conspired to put them in possession of it; and, bursting unexpectedly with the united force of their whole body upon Wessex, Alfred was entirely overwhelmed, and obliged to drive before the storm of his fortune. He fled in disguise into a fastness in the Isle of Athelney, A. D. 876. where he remained four months in the lowest state of indigence, supported by an heroic humility, and that spirit of piety, which neither adverse fortune nor prosperity could overcome. It is much to be lamented, that a character, so formed to interest all men, involved in reverses of fortune, that make the most agreeable and useful part of history, should be only celebrated by pens so little suitable to the dignity of the subject. These revolutions are so little prepared, that we neither can perceive distinctly the causes which sunk him, nor those which again raised him to power. A few naked facts are all our stock. From these we see Alfred, assisted by the casual success of one of his nobles, issuing from his retreat; he heads a powerful army once more, defeats the Danes, drives them out of Wessex, follows his blow, expels them from Mercia, subdues them in North-

umberland, and makes them tributary in East Anglia; and thus established by a number of victories in a full peace, he is presented to us in that character, which makes him venerable to posterity. It is a refreshment, in the midst of such a gloomy waste of barbarism and desolation, to fall upon so fair and cultivated a spot.

A. D. 880. When Alfred had once more reunited the kingdoms of his ancestors, he found the whole face of things in the most desperate condition; there was no observance of law and order; religion had no force; there was no honest industry; the most squalid poverty and the grossest ignorance had overspread the whole kingdom. Alfred at once enterprised the cure of all these evils. To

A. D. 896. remedy the disorders in the government, he revived, improved, and digested all the Saxon institutions; insomuch that he is generally honoured as the founder of our laws and constitution.[1]

The shire he divided into hundreds; the hundreds into tithings; every freeman was obliged to be entered into some tithing, the members of which were mutually bound for each other for the preservation of the peace, and the avoiding theft and rapine. For securing the liberty of the subject, he introduced the method of giving bail, the most certain fence against the abuses of power. It has been observed, that the reigns of weak princes are times favourable to liberty; but

[1] Historians, copying after one another, and examining little, have attributed to this monarch the institution of Juries; an institution, which certainly did never prevail amongst the Saxons. They have likewise attributed to him the distribution of England into shires, hundreds, and tithings, and of appointing officers over these divisions. But it is very obvious that the shires were never settled upon any regular plan, nor are they the result of any single design. But these reports, however ill imagined, are a strong proof of the high veneration in which this excellent prince has always been held; as it has been thought, that the attributing these regulations to him would endear them to the nation. He probably settled them in such an order and made such reformations in his government, that some of the institutions themselves, which he improved, have been attributed to him; and indeed there was one work of his, which serves to furnish us with a higher idea of the political capacity of that great man than any of these fictions. He made a general survey and register of all the property in the kingdom;—who held it, and what it was distinctly: a vast work for an age of ignorance and time of confusion, which has been neglected in more civilized nations and settled times. It was called the Roll of Winton, and served as a model of a work of the same kind made by William the Conqueror.

the wisest and bravest of all the English princes is the father of their freedom. This great man was even jealous of the privileges of his subjects; and as his whole life was spent in protecting them, his last will breathes the same spirit, declaring that he had left his people as free as their own thoughts. He not only collected with great care a complete body of laws, but he wrote comments on them for the instruction of his judges, who were in general by the misfortune of the time ignorant; and if he took care to correct their ignorance, he was rigorous towards their corruption. He inquired strictly into their conduct; he heard appeals in person; he held his Wittena-Gemotes, or parliaments, frequently; and kept every part of his government in health and vigour.

Nor was he less solicitous for the defence, than he had shown himself for the regulation, of his kingdom. He nourished with particular care the new naval strength, which he had established; he built forts and castles in the most important posts; he settled beacons to spread an alarm on the arrival of an enemy; and ordered his militia in such a manner, that there was always a great power in readiness to march, well appointed and well disciplined. But that a suitable revenue might not be wanting for the support of his fleets and fortifications, he gave great encouragement to trade; which, by the piracies on the coast, and the rapine and injustice exercised by the people within, had long become a stranger to this island.

In the midst of these various and important cares, he gave a peculiar attention to learning, which, by the rage of the late wars, had been entirely extinguished in his kingdom. "Very few there were (says this monarch) on this side the Humber, that understood their ordinary prayers, or that were able to translate any Latin book into English; so few, that I do not remember even one qualified to the southward of the Thames when I began my reign." To cure this deplorable ignorance, he was indefatigable in his endeavours to bring into England men of learning in all branches from every part of Europe; and unbounded in his liberality to them. He enacted by a law, that every person possessed of two hides of land should send their children to school until sixteen. Wisely considering where to put a stop to his love even of the liberal arts,

which are only suited to a liberal condition, he enterprised yet a greater design than that of forming the growing generation,—to instruct even the grown; enjoining all his earldormen and sheriffs immediately to apply themselves to learning or to quit their offices. To facilitate these great purposes, he made a regular foundation of an University, which with great reason is believed to have been at Oxford. Whatever trouble he took to extend the benefits of learning amongst his subjects, he showed the example himself, and applied to the cultivation of his mind with unparalleled diligence and success. He could neither read nor write at twelve years old; but he improved his time in such a manner, that he became one of the most knowing men of his age, in geometry, in philosophy, in architecture, and in music. He applied himself to the improvement of his native language; he translated several valuable works from Latin; and wrote a vast number of poems in the Saxon tongue with a wonderful facility and happiness. He not only excelled in the theory of the arts and sciences, but possessed a great mechanical genius for the executive part; he improved the manner of ship-building, introduced a more beautiful and commodious architecture, and even taught his countrymen the art of making bricks, most of the buildings having been of wood before his time; in a word, he comprehended in the greatness of his mind the whole of government and all its parts at once; and what is most difficult to human frailty, was at the same time sublime and minute.

Religion, which in Alfred's father was so prejudicial to affairs, without being in him at all inferior in its zeal and fervour, was of a more enlarged and noble kind; far from being a prejudice to his government, it seems to have been the principle that supported him in so many fatigues, and fed like an abundant source his civil and military virtues. To his religious exercises and studies he devoted a full third part of his time. It is pleasant to trace a genius even in its smallest exertions; in measuring and allotting his time for the variety of business he was engaged in. According to his severe and methodical custom, he had a sort of wax candles, made of different colours, in different proportions, according to the time he allotted to each particular affair; as he carried these about with him wherever he went, to make them burn

evenly, he invented horn lanthorns. One cannot help being amazed, that a prince, who lived in such turbulent times, who commanded personally in fifty-four pitched battles, who had so disordered a province to regulate, who was not only a legislator but a judge, and who was continually superintending his armies, his navies, the traffic of his kingdom, his revenues, and the conduct of all his officers,—could have bestowed so much of his time on religious exercises and speculative knowledge; but the exertion of all his faculties and virtues seemed to have given a mutual strength to all of them. Thus all historians speak of this prince, whose whole history was one panegyric; and whatever dark spots of human frailty may have adhered to such a character, they are entirely hid in the splendour of his many shining qualities and grand virtues, that throw a glory over the obscure period in which he lived, and which is for no other reason worthy of our knowledge. The latter part of his reign was molested with new and formidable attempts from the Danes; but they no longer found the country in its former condition; their fleets were attacked; and those that landed found a strong and regular opposition. There were now fortresses, which restrained their ravages, and armies well appointed to oppose them in the field; they were defeated in a pitched battle; and after several desperate marches from one part of the country to the other, everywhere harassed and hunted, they were glad to return with half their number, and to leave Alfred in quiet to accomplish the great things he had projected. This prince reigned twenty-seven years, and died at last of a disorder in his bowels, which had afflicted him, without interrupting his designs, or souring his temper, during the greatest part of his life. A. D. 897.

CHAPTER V.

SUCCESSION OF KINGS FROM ALFRED TO HAROLD.

His son Edward succeeded; though of less learning than his father, he equalled him in his political virtues; he made war with success on the Welsh, Edward. A. D. 900.

the Scots, and the Danes, and left his kingdom strongly fortified, and exercised, not weakened, with the enterprises of a vigorous reign. Because his son Edmund was under age,

Athelstan. A. D. 925.

the crown was set on the head of his illegitimate offspring, Athelstan. His, like the reigns of all the princes of this time, was molested by the continual incursions of the Danes; and nothing but a succession of men of spirit, capacity, and love of their country, which providentially happened at this time, could ward off the ruin of the kingdom. Such Athelstan was; and such was his

Edmund. A. D. 942.

brother Edmund, who reigned five years with great reputation, but was at length, by an obscure ruffian, assassinated in his own palace. Edred, his

Edred. A. D. 947.

brother, succeeded to the late monarchy; though he had left two sons, Edwin and Edgar, both were passed by on account of their minority. But on this prince's death, which happened after a troublesome reign of ten years, valiantly supported against continual inroads of

Edwin. A. D. 957.

the Danes, the crown devolved on Edwin: of whom little can be said, because his reign was short, and he was so embroiled with his clergy, that we can take his character only from the monks, who in such a case

Edgar. A. D. 959.

are suspicious authority. Edgar, the second son of King Edmund, came young to the throne; but he had the happiness to have his youth formed, and his kingdom ruled, by men of experience, virtue, and authority. The celebrated Dunstan was his first minister, and had a mighty influence over all his actions. This prelate had been educated abroad, and had seen the world to advantage. As he had great power at court by the superior wisdom of his counsels, so by the sanctity of his life he had great credit with the people, which gave a firmness to the government of his master, whose private character was in many respects extremely exceptionable. It was in his reign, and chiefly by the means of his minister Dunstan, that the monks, who had long prevailed in the opinion of the generality of the people, gave a total overthrow to their rivals, the secular clergy. The secular clergy were at this time for the most part married, and were therefore too near the common modes of mankind to draw a great deal of their respect; their character was supported by a very small portion of learning, and their lives

were not such as people wish to see in the clergy. But the monks were unmarried; austere in their lives; regular in their duties; possessed of the learning of the times; well united under a proper subordination; full of art, and implacable towards their enemies. These circumstances, concurring with the dispositions of the king, and the designs of Dunstan, prevailed so far, that it was agreed in a council, convened for that purpose, to expel the secular clergy from their livings, and to supply their places with monks throughout the kingdom. Although the partisans of the secular priests were not a few, nor of the lowest class, yet they were unable to withstand the current of the popular desire, strengthened by the authority of a potent and respected monarch. However, there was a seed of discontent sown on this occasion, which grew up afterwards to the mutual destruction of all the parties. During the whole reign of Edgar, as he had secured the most popular part of the clergy, and with them the people, in his interests, there was no internal disturbance; there was no foreign war, because this prince was always ready for war. But he principally owed his security to the care he took of his naval power, which was much greater, and better regulated, than that of any English monarch before him. He had three fleets always equipped, one of which annually sailed round the island. Thus the Danes, the Scots, the Irish, and the Welsh were kept in awe. He assumed the title of King of all Albion His court was magnificent, and much frequented by strangers. His revenues were in excellent order, and no prince of his time supported the royal character with more dignity.

Edgar had two wives,—Elflada and Elfrida; by the first he had a son called Edward. The second bore him one, called Etheldred. On Edgar's death Edward, in the usual order of succession, was called to the throne; but Elfrida caballed in favour of her son; and finding it impossible to set him up in the life of his brother, she murdered him with her own hands in her castle of Corfe, whither he had retired to refresh himself, wearied with hunting. Etheldred, who by the crimes of his mother ascended a throne sprinkled with his brother's blood, had a part to act, which exceeded the capacity that could be expected in one of his youth and inexperience.

Edward. A. D. 975.

Etheldred. A. D. 979.

The partisans of the secular clergy, who were kept down by the vigour of Edgar's government, thought this a fit time to renew their pretensions. The monks defended themselves in their possession; there was no moderation on either side, and the whole nation joined in these parties. The murder of Edward threw an odious stain on the king, though he was wholly innocent of that crime. There was a general discontent; and every corner was full of murmurs and cabals. In this state of the kingdom it was equally dangerous to exert the fulness of the sovereign authority, or to suffer it to relax. The temper of the king was most inclined to the latter method, which is of all things the worst. A weak government, too easy, suffers evils to grow, which often makes the most rigorous and illegal proceedings necessary. Through an extreme lenity it is on some occasions tyrannical. This was the condition of Etheldred's nobility; who, by being permitted everything, were never contented.

Thus all the principal men held a sort of factious and independent authority; they despised the king, they oppressed the people, and they hated one another. The Danes, in every part of England but Wessex, as numerous as the English themselves, and in many parts more numerous, were ready to take advantage of these disorders; and waited with impatience some new attempt from abroad, that they might rise in favour of the invaders. They were not long without such an occasion; the Danes pour in almost upon every part at once, and distract the defence which the weak prince was preparing to make.

In those days of wretchedness and ignorance, when all the maritime parts of Europe were attacked by these formidable enemies at once, they never thought of entering into any alliance against them; they equally neglected the other obvious method to prevent their incursions, which was to carry the war into the invaders' country.

A. D. 987. What aggravated these calamities, the nobility, mostly disaffected to the king, and entertaining very little regard to their country, made, some of them, a weak and cowardly opposition to the enemy; some actually betrayed their trust; some even were found who undertook the trade of piracy themselves. It was in this condition that Edric, Duke of Mercia, a man of some ability, but light,

inconstant, and utterly devoid of all principle, proposed to buy a peace from the Danes. The general weakness and consternation disposed the king and people to take this pernicious advice. At first, £10,000 was given to the Danes, who retired with this money and the rest of their plunder. The English were now, for the first time, taxed to supply this payment. The imposition was called Danegelt, not more burthensome in the thing than scandalous in the name. The scheme of purchasing peace not only gave rise to many internal hardships, but, whilst it weakened the kingdom, it inspired such a desire of invading it to the enemy, that Sweyn, king of Denmark, came in person soon after with a prodigious fleet and army. The English, having once found the method of diverting the storm by an inglorious bargain, could not bear to think of any other way of resistance. A greater sum, £48,000, was now paid, which the Danes accepted with pleasure, as they could by this means exhaust their enemies and enrich themselves with little danger or trouble. With very short intermissions they still returned, continually increasing in their demands. In a few years they extorted upwards of £160,000 from the English, besides an annual tribute of £48,000. The country was wholly exhausted both of money and spirit. The Danes in England, under the protection of the foreign Danes, committed a thousand insolencies; and so infatuated with stupidity and baseness were the English at this time, that they employed hardly any other soldiers for their defence.

In this state of shame and misery their sufferings suggested to them a design rather desperate than brave. They resolved on a massacre of the Danes; some authors say, that in one night the whole race was cut off. Many, probably all the military men, were so destroyed. But this massacre, injudicious as it was cruel, was certainly not universal; nor did it serve any other or better end than to exasperate those of the same nation abroad; who the next year landed in England with a powerful army to revenge it, and committed outrages even beyond the usual tenor of the Danish cruelty. There was in England no money left to purchase a peace, nor courage to wage a successful war; and the king of Denmark, Sweyn, a prince of capacity, at the head of a large body of brave and enter- A. D. 1002. A. D. 1003.

prising men, soon mastered the whole kingdom, except London. Etheldred, abandoned by fortune and his subjects, was forced to fly into Normandy.

As there was no good order in the English affairs, though continually alarmed, they were always surprised; they were only roused to arms by the cruelty of the enemy; and they were only formed into a body by being driven from their homes; so that they never made a resistance until they seemed to be entirely conquered. This may serve to account for the frequent sudden reductions of the island, and the frequent renewals of their fortune when it seemed the most desperate. Sweyn, in the midst of his victories, dies; and, though succeeded by his son Canute, who inherited his father's resolution, their affairs were thrown into some disorder by this accident. The English were encouraged by it. Etheldred was recalled, and the Danes retired out of the kingdom; but it was only to return the next year with a greater and better appointed force. Nothing seemed able to oppose them. The king dies. A great part of the land was surrendered, without resistance, to Canute. Edmund, the eldest son of Etheldred, supported, however, the declining hopes of the English for some time; in three months he fought three victorious battles; he attempted a fourth, but lost it by the base desertion of Edric, the principal author of all these troubles. It is common with the conquered side to attribute all their misfortunes to the treachery of their own party. They choose to be thought subdued by the treachery of their friends, rather than the superior bravery of their enemies. All the old historians talk in this strain; and it must be acknowledged, that all adherents to a declining party have many temptations to infidelity.

Edmund Ironside. A. D. 1016.

Edmund, defeated but not discouraged, retreated to the Severn, where he recruited his forces. Canute followed at his heels. And now the two armies were drawn up, which were to decide the fate of England; when it was proposed to determine the war by a single combat between the two kings. Neither was unwilling; the Isle of Alney in the Severn was chosen for the lists; Edmund had the advantage by the greatness of his strength, Canute by his address; for when Edmund had so far prevailed as to disarm him, he proposed

a parley, in which he persuaded Edmund to a peace, and to a division of the kingdom. Their armies accepted the agreement; and both kings departed in a seeming friendship. But Edmund died soon after, with a probable suspicion of being murdered by the instruments of his associate in the empire. The Danish race.

Canute on this event assembled the states of the kingdom, by whom he was acknowledged king of all England. He was a prince truly great; for having acquired the kingdom by his valour, he maintained and improved it by his justice and clemency. Choosing rather to rule by the inclination of his subjects than the right of conquest, he dismissed his Danish army, and committed his safety to the laws. He re-established the order and tranquillity, which so long a series of bloody wars had banished. He revived the ancient statutes of the Saxon princes; and governed through his whole reign with such steadiness and moderation, that the English were much happier under this foreign prince than they had been under their natural kings. Canute, though the beginning of his life was stained with those marks of violence and injustice which attend conquest, was remarkable in his latter end for his piety. According to the mode of that time, he made a pilgrimage to Rome, with a view to expiate the crimes which paved his way to the throne; but he made a good use of this peregrination, and returned full of the observations he had made in the country through which he passed, which he turned to the benefit of his extensive dominions. They comprehended England, Denmark, Norway, and many of the countries which lie upon the Baltic. Those he left, established in peace and security, to his children. The fate of his northern possessions is not of this place. England fell to his son Harold, though not without much competition in favour of the sons of Edmund Ironside; while some contended for the right of the sons of Etheldred, Alfred and Edward. Harold inherited none of the virtues of Canute; he banished his mother Emma, murdered his half brother Alfred, and died without issue after a short reign, full of violence, weakness, and cruelty. Canute. Harold I. A. D. 1035.

His brother Hardicanute, who succeeded him, resembled him in his character; he committed Hardicanute. 1039.

new cruelties and injustices in revenging those which his brother had committed, and he died after a yet shorter reign.

The Saxon line restored.

The Danish power, established with so much blood, expired of itself; and Edward, the only surviving son of Etheldred, then an exile in Normandy, was called to the throne by the unanimous voice of the kingdom.

Edward the Confessor. 1041.

This prince was educated in a monastery, where he learned piety, continence, and humility, but nothing of the art of government. He was innocent and artless, but his views were narrow, and his genius contemptible. The character of such a prince is not, therefore, what influences the government, any further than as it puts it in the hands of others. When he came to the throne, Goodwin, Earl of Kent, was the most popular man in England; he possessed a very great estate, an enterprising disposition, and an eloquence beyond the age he lived in; he was arrogant, imperious, assuming, and of a conscience which never put itself in the way of his interest. He had a considerable share in restoring Edward to the throne of his ancestors; and by this merit, joined to his popularity, he for some time directed everything according to his pleasure. He intended to fortify his interest by giving in marriage to the king his daughter, a lady of great beauty, great virtue, and an education beyond her sex. Goodwin had, however, powerful rivals in the king's favour. This monarch, who possessed many of the private virtues, had a grateful remembrance of his favourable reception in Normandy; he caressed the people of that country, and promoted several to the first places, ecclesiastical and civil, in his kingdom. This begot an uneasiness in all the English; but Earl Goodwin was particularly offended. The Normans, on the other hand, accused Goodwin of a design on the Crown, the justice of which imputation the whole tenour of his conduct evinced sufficiently. But as his cabals began to break into action before they were in perfect ripeness for it, the Norman party prevailed, and Goodwin was banished. This man was not only very popular at home by his generosity and address, but he found means to engage even foreigners in his interests. Baldwin, Earl of Flanders, gave him a very kind reception. By his assistance Goodwin fitted out a fleet, hired a competent force, sailed to England, and having near Sandwich de-

ceived the king's navy, he presented himself at London before he was expected. The king made ready as great a force as the time would admit, to oppose him. The galleys of Edward and Goodwin met on the Thames; but such was the general favour to Goodwin, such the popularity of his cause, that the king's men threw down their arms, and refused to fight against their countrymen in favour of strangers. Edward was obliged to treat with his own subjects; and in consequence of this treaty, to dismiss the Normans, whom he believed to be the best attached to his interests. Goodwin used the power to which he was restored to gratify his personal revenge; showing no mercy to his enemies. Some of his sons behaved in the most tyrannical manner. A. D. 1053. The great lords of the kingdom envied and hated a greatness, which annihilated the royal authority, eclipsed them, and oppressed the people; but Goodwin's death soon after quieted for a while their murmurs. The king, who had the least share in the transactions of his own reign, and who was of a temper not to perceive his own insignificance, begun in his old age to think of a successor. He had no children; for some weak reasons of religion, or personal dislike, he had never cohabited with his wife. He sent for his nephew Edward, the son of Edmund Ironside, out of Hungary, where he had taken refuge; but he died soon after he came to England, leaving a son called Edgar Atheling. The king himself, irresolute in so momentous an affair, died without making any settlement. His reign was properly that of his great men, or rather of their factions. All of it that was his own was good. He was careful of the privileges of his subjects; and took care to have a body of the Saxon laws, very favourable to them, digested and enforced. He remitted the heavy imposition called Danegelt, amounting to £40,000 a year, which had been constantly collected after the occasion had ceased; he even repaid to his subjects what he found in the treasury at his accession. In short there is little in his life that can call his title to sanctity in question; though he can never be reckoned among the great kings.

CHAPTER VI.

HAROLD II.—INVASION OF THE NORMANS—ACCOUNT OF THAT PEOPLE AND OF THE STATE OF ENGLAND AT THE TIME OF THE INVASION.

Harold II. A. D. 1066. THOUGH Edgar Atheling had the best title to the succession, yet Harold, the son of Earl Goodwin, on account of the credit of his father, and his own great qualities, which supported and extended the interest of his family, was by the general voice set upon the throne. The right of Edgar, young, and discovering no great capacity, gave him little disturbance in comparison of the violence of his own brother Tosti, whom for his infamous oppression he had found himself obliged to banish. This man, who was a tyrant at home and a traitor abroad, insulted the maritime parts with a piratical fleet, whilst he incited all the neighbouring princes to fall upon his country. Harold Harfager, king of Norway, after the conquest of the Orkneys, with a powerful navy hung over the coasts of England. But nothing troubled Harold so much as the pretensions and the formidable preparation of William duke of Normandy, one of the most able, ambitious, and enterprising men of that age. We have mentioned the partiality of King Edward to the Normans, and the hatred he bore to Goodwin and his family. The duke of Normandy, to whom Edward had personal obligations, had taken a tour into England, and neglected no means to improve these dispositions to his own advantage. It is said, that he then received the fullest assurances of being appointed to the succession, and that Harold himself had been sent soon after into Normandy to settle whatever related to it. This is an obscure transaction; and would, if it could be cleared up, convey but little instruction. So that whether we believe, or not, that William had engaged Harold by a solemn oath to secure him the kingdom, we know that he afterwards set up a will of King Edward in his favour, which however he never produced, and probably never had to produce. In these delicate circumstances Harold was not wanting to himself. By the most equitable laws, and the most popular behaviour, he sought to secure the affections of his subjects; and he succeeded so well, that when he marched against the king of Norway, who had in-

vaded his kingdom and taken York, without difficulty he raised a numerous army of gallant men, zealous for his cause and their country. He obtained a signal and decisive victory over the Norwegians. The king Harfager, and the traitor Tosti, who had joined him, were slain in the battle; and the Norwegians were forced to evacuate the country. Harold had however but little time to enjoy the fruits of his victory.

Scarce had the Norwegians departed, when William Duke of Normandy landed in the southern part of the kingdom with an army of 60,000 chosen men, and struck a general terror through all the nation, which was well acquainted with the character of the commander, and the courage and discipline of his troops.

The Normans were the posterity of those Danes, who had so long and so cruelly harassed the British islands, and the shore of the adjoining continent. In the days of King Alfred a body of these adventurers, under their leader Rollo, made an attempt upon England; but so well did they find every spot defended by the vigilance and bravery of that great monarch, that they were compelled to retire. Beaten from these shores, the stream of their impetuosity bore towards the northern parts of France, which had been reduced to the most deplorable condition by their former ravages. Charles the Simple then sat on the throne of that kingdom; unable to resist this torrent of barbarians, he was obliged to yield to it; he agreed to give up to Rollo the large and fertile province of Neustria, to hold of him as his feudatory. This province, from the new inhabitants, was called Normandy. Five princes succeeded Rollo, who maintained with great bravery, and cultivated with equal wisdom, his conquests. The ancient ferocity of this people was a little softened by their settlement; but the bravery, which had made the Danes so formidable, was not extinguished in the Normans, nor the spirit of enterprise. Not long before this period, a private gentleman of Normandy, by his personal bravery, had acquired the kingdom of Naples. Several others followed his fortunes, who added Sicily to it. From one end of Europe to the other the Norman name was known, respected, and feared. Robert, the sixth Duke of Normandy, to expiate some crime, which lay heavy upon his conscience, resolved, according to the ideas of that time, upon a pil-

grimage to Jerusalem. It was in vain that his nobility, whom he had assembled to notify this resolution to them, represented to him the miserable state to which his country would be reduced, abandoned by its prince, and uncertain of a legal successor. The duke was not to be moved from his resolution, which appeared but the more meritorious from the difficulties which attended it. He presented to the states William, then an infant, born of an obscure woman, whom, notwithstanding, he doubted not to be his son; him he appointed to succeed; him he recommended to their virtue and loyalty; and then solemnly resigning the government in his favour, he departed on the pilgrimage, from whence he never returned. The states, hesitating some time between the mischiefs that attend the allowing an illegitimate succession, and those which might arise from admitting foreign pretensions, thought the former the least prejudicial, and accordingly swore allegiance to William; but this oath was not sufficient to establish a right so doubtful. The Dukes of Burgundy and Brittany, as well as several Norman noblemen, had specious titles. The endeavours of all these disquieted the reign of the young prince with perpetual troubles. In these troubles he was formed early in life to vigilance, activity, secrecy, and a conquest over all those passions, whether bad or good, which obstruct the way to greatness. He had to contend with all the neighbouring princes; with the seditions of a turbulent and unfaithful nobility, and the treacherous protection of his feudal lord the king of France. All of these in their turns, sometimes all of these together, distressed him. But with the most unparalleled good fortune and conduct he overcame all opposition, and triumphed over every enemy: raising his power and reputation above that of all his ancestors, as much as he was exalted by his bravery above the princes of his own time.

Such was the prince, who, on a pretended claim from the will of King Edward, supported by the common and popular pretence of punishing offenders and redressing grievances, landed at Pevensey in Sussex, to contest the Crown with Harold. Harold had no sooner advice of his landing than he advanced to meet him with all possible diligence; but there did not appear in his army, upon this occasion, the same unanimity and satisfaction which animated it on its

march against the Norwegians. An ill-timed economy in Harold, which made him refuse to his soldiers the plunder of the Norwegian camp, had created a general discontent. Several deserted, and the soldiers who remained followed heavily a leader under whom there was no hope of plunder,—the greatest incitement of the soldiery. Notwithstanding this ill disposition, Harold still urged forward, and by forced marches advanced within seven miles of the enemy. The Norman, on his landing, is said to have sent away his ships, that his army might have no way of safety but in conquest; yet had he fortified his camp, and taken every prudent precaution, that so considerable an enterprise should not be reduced to a single effort of despair. When the armies, charged with the decision of so mighty a contest, had approached each other, Harold paused awhile. A great deal depended on his conduct at this critical time. The most experienced in the council of war, who knew the condition of their troops, were of opinion, that the engagement ought to be deferred; that the country ought to be wasted; that, as the winter approached, the Normans would in all probability be obliged to retire of themselves; that, if this should not happen, the Norman army was without resources; whilst the English would be every day considerably augmented, and might attack their enemy at a time and manner, which might make their success certain. To all these reasons nothing was opposed but a false point of honour, and a mistaken courage in Harold; who urged his fate, and resolved on an engagement. The Norman, as soon as he perceived that the English were determined on a battle, left his camp to post himself in an advantageous situation, in which his whole army remained the night which preceded the action.

This night was spent in a manner which prognosticated the event of the following day. On the part of the Normans it was spent in prayer, and in a cool and steady preparation for the engagement; on the side of the English in riot, and a vain confidence, that neglected all the necessary preparations. The two armies met in the morning; from seven to five the battle was fought with equal vigour; until at last the Norman army pretending to break in confusion, a stratagem to which they had been regularly formed, the English, elated with success, suffered that firm order, in which their

security consisted, to dissipate; which when William observed, he gave the signal to his men to regain their former disposition, and fall upon the English, broken and dispersed. Harold in this emergency did everything which became him, everything possible to collect his troops and to renew the engagement; but whilst he flew from place to place, and in all places restored the battle, an arrow pierced his brain; and he died a king, in a manner worthy of a warrior. The English immediately fled; the rout was total, and the slaughter prodigious.

The consternation which this defeat and the death of Harold produced over the kingdom, was more fatal than the defeat itself. If William had marched directly to London, all contest had probably been at an end; but he judged it more prudent to secure the sea-coast, to make way for reinforcements; distrusting his fortune in his success more than he had done in his first attempts. He marched to Dover, where the effect of his victory was such, that the strong castle there surrendered without resistance. Had this fortress made any tolerable defence, the English would have had leisure to rouse from their consternation, and plan some rational method for continuing the war; but now the conqueror was on full march to London, whilst the English were debating concerning the measures they should take, and doubtful in what manner they should fill the vacant throne. However, in this emergency it was necessary to take some resolution. The party of Edgar Atheling prevailed; and he was owned king by the city of London, which even at this time was exceedingly powerful, and by the greatest part of the nobility then present. But his reign was of a short duration. William advanced by hasty marches; and, as he approached, the perplexity of the English redoubled; they had done nothing for the defence of the city. They had no reliance on their new king; they suspected one another; there was no authority, no order, no counsel; a confused and ill-sorted assembly of unwarlike people, of priests, burghers, and nobles, confounded with them in the general panic, struck down by the consternation of the late defeat, and trembling under the bolts of the papal excommunication, were unable to plan any method of defence: insomuch that, when he had passed the Thames and drew near to London,

the clergy, the citizens, and the greater part of the nobles, who had so lately set the crown on the head of Edgar, went out to meet him: they submitted to him, and having brought him in triumph to Westminster, he was there solemnly crowned King of England. The whole nation followed the example of London; and one battle gave England to the Normans, which had cost the Romans, the Saxons, and Danes, so much time and blood to acquire.

At first view it is very difficult to conceive how this could have happened to a powerful nation, in which it does not appear that the conqueror had one partisan. It stands a single event in history, unless, perhaps, we may compare it with the reduction of Ireland some time after by Henry the Second. An attentive consideration of the state of the kingdom at that critical time may, perhaps, in some measure lay open to us the cause of this extraordinary revolution.

The nobility of England, in which its strength consisted, was much decayed. Wars and confiscations, but above all the custom of Gavelkind, had reduced that body very low. At the same time some few families had been raised to a degree of power unknown in the ancient Saxon times, and dangerous in all. Large possessions, and a larger authority, were annexed to the offices of the Saxon magistrates, whom they called Aldermen. This authority, in their long and bloody wars with the Danes, it was found necessary to increase, and often to increase beyond the ancient limits. Aldermen were created for life; they were then frequently made hereditary; some were vested with a power over others; and at this period we begin to hear of dukes, who governed over several shires, and had many aldermen subject to them. These officers found means to turn the royal bounty into an instrument of becoming independent of its authority. Too great to obey, and too little to protect, they were a dead weight upon the country. They began to cast an eye on the Crown, and distracted the nation by cabals to compass their designs. At the same time they nourished the most terrible feuds amongst themselves. The feeble government of Edward established these abuses. He could find no method of humbling one subject grown too great, but by aggrandizing in the same excessive degree some others. Thus he endeavoured to balance the power of Earl Goodwin by exalting

Leofric Duke of Mercia, and Seward Duke of Northumberland, to an extravagant greatness. The consequence was this; he did not humble Goodwin, but raised him potent rivals. When, therefore, this prince died, the lawful successor to the Crown, who had nothing but right in his favour, was totally eclipsed by the splendour of the great men, who had adorned themselves with the spoils of royalty. The throne was now the prize of faction; and Harold, the son of Goodwin, having the strongest faction, carried it. By this success the opposite parties were inflamed with a new occasion of rancour and animosity; and an incurable discontent was raised in the minds of Edwin and Morcar, the sons of Duke Leofric, who inherited their father's power and popularity; but this animosity operated nothing in favour of the legitimate heir, though it weakened the hands of the governing prince.

The death of Harold was far from putting an end to these evils; it rather unfolded more at large the fatal consequences of the ill measures which had been pursued. Edwin and Morcar set on foot once more their practices to obtain the Crown; and when they found themselves baffled, they retired in discontent from the councils of the nation; withdrawing thereby a very large part of its strength and authority. The council of the nation, which was formed of the clashing factions of a few great men, (for the rest were nothing,)—divided, disheartened, weakened, without head, without direction, dismayed by a terrible defeat,—submitted, because they saw no other course, to a conqueror, whose valour they had experienced, and who had hitherto behaved with great appearance of equity and moderation. As for the grandees, they were contented rather to submit to this foreign prince, than to those whom they regarded as their equals and enemies.

With these causes other strong ones concurred. For near two centuries the continual and bloody wars with the Danes had exhausted the nation; the peace, which for a long time they were obliged to buy dearly, exhausted it yet more; and it had not sufficient leisure, nor sufficient means of acquiring wealth, to yield at this time any extraordinary resources. The new people, which after so long a struggle had mixed with the English, had not yet so thoroughly incorporated with the ancient inhabitants, that a perfect union might be expected

between them; or that any strong uniform national effort might have resulted from it. Besides, the people of England were the most backward in Europe in all improvements, whether in military or in civil life. Their towns were meanly built, and more meanly fortified; there was scarcely anything that deserved the name of a strong place in the kingdom; there was no fortress, which, by retarding the progress of a conqueror, might give the people an opportunity of recalling their spirits and collecting their strength. To these we may add, that the pope's approbation of William's pretensions gave them great weight, especially amongst the clergy; and that this disposed and reconciled to submission a people, whom the circumstances we have mentioned had before driven to it.

CHAPTER VII.

OF THE LAWS AND INSTITUTIONS OF THE SAXONS.

BEFORE we begin to consider the laws and institutions of the Saxons, let us take a view of the state of the country from whence they are derived, as it is portrayed in ancient writers. This view will be the best comment on their institutions. Let us represent to ourselves a people without learning, without arts, without industry, solely pleased and occupied with war, neglecting agriculture, abhorring cities, and seeking their livelihood only from pasturage and hunting, through a boundless range of morasses and forests. Such a people must necessarily be united to each other by very feeble bonds; their ideas of government will necessarily be imperfect, their freedom and their love of freedom great. From these dispositions it must happen of course, that the intention of investing one person, or a few, with the whole powers of government, and the notion of deputed authority or representation, are ideas that never could have entered their imaginations. When, therefore, amongst such a people any resolution of consequence was to be taken, there was no way of effecting it but by bringing together the whole body of the nation, that every individual might consent to the law, and each reciprocally bind the other to the observa-

tion of it. This polity, if so it may be called, subsists still in all its simplicity in Poland.

But, as in such a society as we have mentioned, the people cannot be classed according to any political regulations, great talents have a more ample sphere in which to exert themselves, than in a close and better formed society. These talents must therefore have attracted a great share of the public veneration, and drawn a numerous train after the person distinguished by them, of those who sought his protection, or feared his power, or admired his qualifications, or wished to form themselves after his example, or, in fine, of whoever desired to partake of his importance by being mentioned along with him. These the ancient Gauls, who nearly resembled the Germans in their customs, called Ambacti; the Romans called them Comites. Over these their chief had a considerable power, and the more considerable, because it depended upon influence rather than institution; influence amongst so free a people being the principal source of power. But this authority, great as it was, never could by its very nature be stretched to despotism; because any despotic act would have shocked the only principle by which that authority was supported, the general good opinion. On the other hand, it could not have been bounded by any positive laws, because laws can hardly subsist amongst a people who have not the use of letters. It was a species of arbitrary power, softened by the popularity from whence it arose. It came from popular opinion, and by popular opinion it was corrected.

If people so barbarous as the Germans have no laws, they have yet customs, that serve in their room; and these customs operate amongst them better than laws, because they become a sort of nature both to the governors and the governed. This circumstance in some measure removed all fear of the abuse of authority, and induced the Germans to permit their chiefs[1] to decide upon matters of lesser moment, their private differences, for so Tacitus explains the *minores res*. These chiefs were a sort of judges, but not legislators; nor do they appear to have had a share in the superior branches of the executive part of government, the business

[1] They had no other nobility; yet several families amongst them were considered as noble.

of peace and war, and everything of a public nature, being determined, as we have before remarked, by the whole body of the people, according to a maxim general among the Germans, that what concerned all ought to be handled by all. Thus were delineated the faint and incorrect outlines of our constitution, which has since been so nobly fashioned and so highly finished. This fine system, says Montesquieu, was invented in the woods; but whilst it remained in the woods, and for a long time after, it was far from being a fine one; no more indeed than a very imperfect attempt at government, a system for a rude and barbarous people, calculated to maintain them in their barbarity.

The ancient state of the Germans was military; so that the orders into which they were distributed, their subordination, their courts, and every part of their government, must be deduced from an attention to a military principle.

The ancient German people, as all the other northern tribes, consisted of freemen and slaves; the freemen professed arms, the slaves cultivated the ground. But men were not allowed to profess arms at their own will, nor until they were admitted to that dignity by an established order, which at a certain age separated the boys from men. For when a young man approached to virility,[1] he was not yet admitted as a member of the state, which was quite military, until he had been invested with a spear in the public assembly of his tribe; and then he was adjudged proper to carry arms, and also to assist in the public deliberations, which were always held armed.[2] This spear he generally received from the hand of some old and respected chief, under[3] whom he commonly entered himself, and was admitted among his followers. No man could stand out as an independent individual, but must have enlisted in one of these military fraternities; and as soon as he had so enlisted, immediately he became bound to his leader in the strictest dependence, which was confirmed by an oath,[4] and to his brethren in a common vow for their

[1] *Arma sumere non ante cuiquam moris, quàm civitas suffecturum probaverit.*—Tacitus de Mor. Germ. 13.

[2] *Nihil autem neque publicæ neque privatæ rei nisi armati agunt.* Id. ibid.

[3] *Cæteri robustioribus ac jam pridem probatis aggregantur.* Id. ibid.

[4] *Illum defendere, tueri, sua quoque fortia facta ejus gloriæ assignare præcipuum sacramentum est.* Id. 14.

mutual support in all dangers, and for the advancement and the honour of their common chief. This chief was styled senior, lord, and the like terms, which marked out a superiority in age and merit; the followers were called ambacti, comites, leuds, vassals, and other terms, marking submission and dependence. This was the very first origin of civil, or rather military, government amongst the ancient people of Europe; and it arose from the connexion that necessarily was created between the person who gave the arms, or knighted the young man, and him that received them; which implied, that they were to be occupied in his service who originally gave them. These principles it is necessary strictly to attend to, because they will serve much to explain the whole course both of government and real property, wherever the German nations obtained a settlement; the whole of their government depending for the most part upon two principles in our nature,—ambition, that makes one man desirous, at any hazard or expense, of taking the lead amongst others; and admiration, which makes others equally desirous of following him from the mere pleasure of admiration, and a sort of secondary ambition, one of the most universal passions among men. These two principles, strong both of them in our nature, create a voluntary inequality and dependence. But amongst equals in condition, there could be no such bond, and this was supplied by confederacy; and as the first of these principles created the senior and the knight, the second produced the *conjurati fratres*, which, sometimes as a more extensive, sometimes as a stricter bond, is perpetually mentioned in the old laws and histories.

The relation between the lord and the vassal produced another effect,—that the leader was obliged to find sustenance for his followers; and to maintain them at his table, or give them some equivalent in order to their maintenance. It is plain from these principles, that this service on one hand, and this obligation to support on the other, could not have originally been hereditary, but must have been entirely in the free choice of the parties.

But it is impossible that such a polity could long have subsisted by election alone. For in the first place, that natural love, which every man has to his own kindred, would make the chief willing to perpetuate the power and dignity

he acquired in his own blood; and for that purpose, even during his own life, would raise his son, if grown up, or his collaterals, to such a rank, as they should find it only necessary to continue their possession upon his death. On the other hand, if a follower was cut off in war, or fell by natural course, leaving his offspring destitute, the lord could not so far forget the services of his vassal as not to continue his allowance to his children; and these again growing up, from reason and gratitude, could only take their knighthood at his hands from whom they had received their education; and thus, as it could seldom happen but that the bond, either on the side of the lord or dependant, was perpetuated, some families must have been distinguished by a long continuance of this relation, and have been therefore looked upon in an honourable light from that only circumstance, from whence honour was derived in the northern world. Thus nobility was seen in Germany; and in the earliest Anglo-Saxon times, some families were distinguished by the title of Ethelings, or of noble descent. But this nobility of birth was rather a qualification for the dignities of the state than an actual designation to them. The Saxon ranks are chiefly designed to ascertain the quantity of the composition for personal injuries against them.

But though this hereditary relation was created very early, it must not be mistaken for such a regular inheritance as we see at this day: it was an inheritance only according to the principles from whence it was derived; by them it was modified. It was originally a military connexion; and if a father left his son under a military age, so as that he could neither lead nor judge his people, nor qualify the young men, who came up under him, to take arms;—in order to continue the cliental bond, and not to break up an old and strong confederacy, and thereby disperse the tribe; who should be pitched upon to head the whole, but the worthiest of blood of the deceased leader? he, that ranked next to him in his life:[1] and this is Tanistry, which is a succession made up of inheritance and election; a succession, in which blood is inviolably regarded, so far as it was consistent with military purposes. It was thus that our kings succeeded to the

[1] Deputed authority, guardianship, &c. not known to the northern nations; they gained this idea by intercourse with the Romans.

throne throughout the whole time of the Anglo-Saxon empire. The first kings of the Franks succeeded in the same manner, and without all doubt the succession of all the inferior chieftains was regulated by a similar law. Very frequent examples occur in the Saxon times, where the son of the deceased king, if under age, was entirely passed over, and his uncle, or some remoter relation, raised to the Crown; but there is not a single instance where the election has carried it out of the blood. So that in truth the controversy, which has been managed with such heat, whether in the Saxon times the Crown was hereditary or elective, must be determined, in some degree, favourably for the litigants on either side; for it was certainly both hereditary and elective within the bounds which we have mentioned. This order prevailed in Ireland, where the northern customs were retained some hundreds of years after the rest of Europe had in a great measure receded from them. Tanistry continued in force there until the beginning of the last century. And we have greatly to regret the narrow notions of our lawyers, who abolished the authority of the Brehon law, and at the same time kept no monuments of it; which if they had done, there is no doubt but many things, of great value towards determining many questions relative to the laws, antiquities, and manners of this and other countries, had been preserved. But it is clear, though it has not been, I think, observed, that the ascending collateral branch was much regarded amongst the ancient Germans, and even preferred to that of the immediate possessor, as being, in case of an accident arising to the chief, the presumptive heir, and him on whom the hope of the family was fixed. And this is upon the principles of Tanistry; and the rule seems to have taken such deep root, as to have much influenced a considerable article of our feudal law. For what is very singular, and, I take it, otherwise unaccountable, a collateral warranty bound even without any descending assets, where the lineal did not, unless something descended; and this subsisted invariably in the law until this century.

Thus we have seen the foundation of the northern government, and the orders of their people, which consisted of dependence and confederacy;—that the principal end of both was military; that protection and maintenance were due on

the part of the chief, obedience on that of the follower; that the followers should be bound to each other, as well as to the chief; that this headship was not at first hereditary, but that it continued in the blood by an order of its own, called Tanistry.

All these unconnected and independent parts were only linked together by a common council; and here religion interposed. Their priests, the Druids, having a connexion throughout each state, united it. They called the assembly of the people; and here their general resolutions were taken; and the whole might rather be called a general confederacy, than a government. In no other bonds, I conceive, were they united before they quitted Germany. In this ancient state we know them from Tacitus. Then follows an immense gap, in which undoubtedly some changes were made by time; and we hear little more of them until we find them Christians, and makers of written laws.

In this interval of time the origin of kings may be traced out. When the Saxons left their own country in search of new habitations, it must be supposed that they followed their leaders, whom they so much venerated at home; but as the wars, which made way for their establishment, continued for a long time, military obedience made them familiar with a stricter authority. A subordination too became necessary among the leaders of each band of adventurers: and being habituated to yield an obedience to a single person in the field, the lustre of his command, and the utility of the institution, easily prevailed upon them to suffer him to form the band of their union, in time of peace, under the name of king. But the leader neither knew the extent of the power he received, nor the people of that which they bestowed. Equally unresolved were they about the method of perpetuating it; sometimes filling the vacant throne by election without regard to, but more frequently regarding, the blood of the deceased prince; but it was late before they fell into any regular plan of succession, if ever the Anglo-Saxons attained it. Thus their polity was formed slowly; the prospect clears up by little and little; and this species of an irregular republic we see turned into a monarchy as irregular. It is no wonder that the advocates for the several parties among us find something to favour their several notions in the Saxon govern-

ment, which was never supported by any fixed or uniform principle.

To comprehend the other parts of the government of our ancestors, we must take notice of the orders into which they were classed. As well as we can judge in so obscure a matter, they were divided into nobles or gentlemen; freeholders; freemen that were not freeholders; and slaves. Of these last we have little to say, as they were nothing in the state. The nobles were called Thanes, or servants. It must be remembered, that the German chiefs were raised to that honourable rank by those qualifications, which drew after them a numerous train of followers and dependants.[1] If it was honourable to be followed by a numerous train, so it was honourable in a secondary degree to be a follower of a man of consideration; and this honour was the greater in proportion to the quality of the chief, and to the nearness of the attendance on his person. When a monarchy was formed, the splendour of the Crown naturally drowned all the inferior honours; and the attendants on the person of the king were considered as the first in rank, and derived their dignity from their service. Yet as the Saxon government had still a large mixture of the popular, it was likewise requisite, in order to raise a man to the first rank of thanes, that he should have a suitable attendance and sway amongst the people. To support him in both of these, it was necessary that he should have a competent estate. Therefore, in this service of the king, this attendance on himself, and this estate to support both, the dignity of a thane consisted. I understand here a thane of the first order.

Every thane, in the distribution of his lands, had two objects in view, the support of his family, and the maintenance of his dignity. He therefore retained in his own hands a parcel of land, near his house, which in the Saxon times was called inland, and afterwards his demesne, which served to keep up his hospitality; and this land was cultivated either by slaves, or by the poorer sort of people, who held lands of him by the performance of this service. The other portion of his estate he either gave for life or lives to his followers, men of a liberal condition, who served the greater thane, as he himself served the king. They were called Under Thanes, or according to the

[1] Jud. Civ. Lond. apud Wilk. post, p. 68.

language of that time, Theoden.[1] They served their lord in all public business; they followed him in war; and they sought justice in his court in all their private differences. These may be considered as freeholders of the better sort, or indeed a sort of lesser gentry; therefore as they were not the absolute dependants, but in some measure the peers, of their lord, when they sued in his court they claimed the privilege of all the German freemen, the right of judging one another; the lord's steward was only the register. This domestic court, which continued in full vigour for many ages, the Saxons called Hallmote, from the place in which it was held; the Normans, who adopted it, named it a Court-Baron. This court had another department, in which the power of the lord was more absolute. From the most ancient times the German nobility considered themselves as the natural judges of those who were employed in the cultivation of their lands; looking on husbandmen with contempt, and only as a parcel of the soil which they tilled; to these the Saxons commonly allotted some part of their out-lands to hold as tenants-at-will, and to perform very low services for them. The differences of these inferior tenants were decided in the lord's court, in which his steward sat as judge; and this manner of tenure probably gave an origin to copyholders.[2] Their estates were at will, but their persons were free; nor can we suppose that villains, if we consider villains as synonymous to slaves, could ever by any natural course have risen to copyholders; because the servile condition of the villain's person would always have prevented that stable tenure in the lands, which the copyholders came to in very early time. The merely servile part of the nation seems never to have been known by the name of villains or Ceorles; but by those of Bordars, Esnes, and Theowes.

Hallmote or Court-Baron.

As there were large tracts throughout the country not subject to the jurisdiction of any thane, the inhabitants of which were probably some remains of the ancient Britons not reduced to absolute slavery, and such Saxons as had not attached themselves to the fortunes of any leading man, it

[1] Spelman of Feuds, ch. 7.

[2] *Fuerunt etiam in conquestu liberi homines, qui liberè tenuerunt tenementa sua per libera servitia vel per liberas consuetudines.* For the original of Copyholds, see Bracton, l. i. fo. 7.

was proper to find some method of uniting and governing these detached parts of the nation, which had not been brought into order by any private dependence. To answer this end, the whole kingdom was divided into shires; these into hundreds, and the hundreds into tithings.[1] This division was not made, as it is generally imagined, by King Alfred, though he might have introduced better regulations concerning it; it prevailed on the continent, wherever the northern nations had obtained a settlement; and it is a species of order extremely obvious to all who use the decimal notation; when for the purposes of government they divide a county, tens and hundreds are the first modes of division which occur. The tithing, which was the smallest of these divisions, consisted of ten heads of families, free, and of some consideration. These held a court every fortnight, which they called the Folkmote, or Leet, and there became reciprocally bound to each other, and to the public, for their own peaceable behaviour and that of their families and dependants. Every man in the kingdom, except those who belonged to the seigneurial courts we have mentioned, was obliged to enter himself into some tithing; to this he was inseparably attached; nor could he by any means quit it without licence from the head of the tithing; because, if he was guilty of any misdemeanor, his district was obliged to produce him, or pay his fine. In this manner was the whole nation, as it were, held under sureties; a species of regulation undoubtedly very wise with regard to the preservation of peace and order, but equally prejudicial to all improvement in the minds or the fortunes of the people, who, fixed invariably to the spot, were depressed with all the ideas of their original littleness, and by all that envy, which is sure

Tithing court.

[1] *Ibi debent populi omnes et universæ gentes singulis annis semel in anno (scilicet in capitè cal. Maii) et se fide et sacramento non fracto ibi in unum et simul confederare, et consolidare sicut conjurati fratres ad defendendum regnum contra alienigenas et contra inimicos unà cum domino suo rege, et terras et honores illius omni fidelitate cum eo servare et quod illi ut domino suo regi intra et extra regnum universum Britanniæ fideles esse volunt.* LL. Ed. Conf. c. 35. Of Heretoches and their election, vide Id. eodem.

Prohibitum erat etiam in eâdem lege ne quis emeret vivum animal vel pannum usitatum sine plegiis et bonis testibus. Of other particulars of buying and selling, vide Leges Ed. Conf. 38.

to arise in those, who see their equals attempting to mount over them. This rigid order deadened by degrees the spirit of the English, and narrowed their conceptions. Everything was new to them, and therefore everything was terrible; all activity, boldness, enterprise, and invention died away. There may be a danger in straining too strongly the bonds of government; as a life of absolute licence tends to turn men into savages. The other extreme of constraint operates much in the same manner; it reduces them to the same ignorance, but leaves them nothing of the savage spirit. These regulations helped to keep the people of England the most backward in Europe; for though the division into shires, and hundreds, and tithings, was common to them with the neighbouring nations, yet the *Frankplege* seems to be a peculiarity in the English constitution; and for good reasons they have fallen into disuse, though still some traces of them are to be found in our laws.

Hundred court

Ten of these tithings made an hundred; here in ordinary course they held a monthly court for the centenary, when all the suitors of the subordinate tithings attended. Here were determined causes concerning breaches of the peace, small debts, and such matters as rather required a speedy than a refined justice.

County court.

There was in the Saxon constitution a great simplicity. The higher order of courts were but the transcript of the lower, somewhat more extended in their objects and in their power; and their power over the inferior courts proceeded only from their being a collection of them all. The county or shire court was the great resort (for the four great courts of record did not then exist). It served to unite all the inferior districts with one another, and those with the private jurisdiction of the thanes. This court had no fixed place. The alderman of the shire appointed it. Hither came to account for their own conduct, and that of those beneath them, the bailiffs of hundreds, and tithings, and boroughs, with their people; the thanes of either rank, with their dependents; a vast concourse of the clergy of all orders; in a word, of all who sought or distributed justice. In this mixed assembly the obligations contracted in the inferior courts were renewed; a general oath of allegiance to the king was taken; and all debates between the several infe-

rior co-ordinate jurisdictions, as well as the causes of too much weight for them, finally determined. In this court presided (for in strict signification he does not seem to have been a judge) an officer of great consideration in those times, called the Ealdorman of the shire. With him sat the bishop, to decide in whatever related to the church; and to mitigate the rigour of the law by the interposition of equity, according to the species of mild justice that suited the ecclesiastical character. It appears by the ancient Saxon laws, that the bishop was the chief acting person in this court. The reverence in which the clergy were then held, the superior learning of the bishop, his succeeding to the power and jurisdiction of the Druid, all contributed to raise him far above the ealdorman, and to render it in reality his court. And this was probably the reason of the extreme lenity of the Saxon laws. The canons forbade the bishops to meddle in cases of blood. Amongst the ancient Gauls and Germans the Druid could alone condemn to death. So that on the introduction of Christianity there was none, who could, in ordinary course, sentence a man to capital punishment. Necessity alone forced it in a few cases.

Ealdorman and Bishop.

Concerning the right of appointing the alderman of the shire there is some uncertainty. That he was anciently elected by his county is indisputable; that an alderman of the shire was appointed by the Crown seems equally clear from the writers of the Life of King Alfred. A conjecture of Spelman throws some light upon this affair. He conceives that there were two aldermen with concurrent jurisdiction, one of whom was elected by the people, the other appointed by the king. This is very probable, and very correspondent to the nature of the Saxon constitution, which was a species of democracy, poised and held together by a degree of monarchical power. If the king had no officer to represent him in the county court, wherein all the ordinary business of the nation was then transacted, the state would have hardly differed from a pure democracy. Besides, as the king had in every county large landed possessions, either in his demesne, or to reward and pay his officers, he would have been in a much worse condition than any of his subjects, if he had been destitute of a magistrate to take care of his rights and to do justice to his numerous vassals. It appears, as well as we can judge in

so obscure a matter, that the popular alderman was elected for a year only; and that the royal alderman held his place at the king's pleasure. This latter office, however, in process of time, was granted for life; and it grew afterwards to be hereditary in many shires.

The sheriff.

We cannot pretend to say when the sheriff came to be substituted in the place of the ealdorman; some authors think King Alfred the contriver of this regulation. It might have arisen from the nature of the thing itself. As several persons, of consequence enough to obtain by their interest or power the place of alderman, were not sufficiently qualified to perform the duty of the office, they contented themselves with the honorary part, and left the judicial province to their substitute.[1] The business of the robe to a rude martial people was contemptible and disgusting. The thanes, in their private jurisdictions, had delegated their power of judging to their Reeves or stewards; and the earl, or alderman, who was in the shire what the thane was in his manor, for the same reasons officiated by his deputy, the Shire-reeve. This is the origin of the Sheriff's Tourn, which decided in all affairs, civil and criminal, of whatever importance; and from which there lay no appeal but to the Wittenagemote. Now there scarce remains the shadow of a body, formerly so great; the judge being reduced almost wholly to a ministerial officer; and to the court there being left nothing more than the cognizance of pleas under forty shillings, unless by a particular writ or special commission. But by what steps such a revolution came on, it will be our business hereafter to inquire.

Sheriff's Tourn.

Wittenagemote.

The Wittenagemote or Saxon parliament, the supreme court, had authority over all the rest, not upon any principle of subordination, but because it was formed of all the rest. In this assembly, which was held annually, and sometimes twice a year, sat the earls and bishops, and greater thanes, with the other officers of the

[1] Sheriff in the Norman times was merely the king's officer; not the earl's. The earl retained his ancient fee without jurisdiction; the sheriff did all the business. The elective sheriff must have disappeared on the conquest, for then all land was the king's, either immediately or mediately and therefore his officer governed.

Crown.[1] So far as we can judge by the style of the Saxon laws, none but the thanes, or nobility, were considered as necessary constituent parts of this assembly, at least whilst it acted deliberatively. It is true that great numbers of all ranks of people attended its session, and gave by their attendance, and their approbation of what was done, a sanction to the laws; but when they consented to anything, it was rather in the way of acclamation, than by the exercise of a deliberative voice, or a regular assent or negative. This may be explained by considering the analogy of the inferior assemblies. All persons, of whatever rank, attended at the county courts, but they did not go there as judges, they went to sue for justice; to be informed of their duty, and to be bound to the performance of it. Thus all sorts of people attended at the Wittenagemotes, not to make laws, but to attend at the promulgation of the laws;[2] as among so free a people every institution must have wanted much of its necessary authority, if not confirmed by the general approbation. Lambard is of opinion, that in these early times the commons sat, as they do at this day, by representation from shires and boroughs; and he supports his opinion by very plausible reasons. A notion of this kind, so contrary to the simplicity of the Saxon ideas of government, and to the genius of that people, who held the arts and commerce in so much contempt, must be founded on such appearances as no other explanation can account for.

To the reign of Henry II. the citizens and burgesses were little removed from absolute slaves. They might be taxed individually at what sum the king thought fit to demand; or they might be discharged by offering the king a sum, from which, if he accepted it, the citizens were not at liberty to recede; and in either case the demand was exacted with severity, and even cruelty. A great difference is made between taxing them, and those who cultivate lands; because, says my author, their property is easily concealed; they live penuriously, are intent by all methods to increase their substance, and their immense wealth is not easily exhausted.

[1] How this assembly was composed, or by what right the members sat in it, I cannot by any means satisfy myself. What is here said is, I believe, nearest to the truth.

[2] Hence, perhaps, all men are supposed cognizant of the law.

Such was their barbarous notion of trade, and its importance. The same author, speaking of the severe taxation, and violent method of extorting it, observes, that it is a very proper method; and that it is very just, that a degenerate officer or other freeman, rejecting his condition for sordid gain, should be punished beyond the common law of freemen.

I take it, that those, who held by ancient demesne, did not prescribe simply not to contribute to the expenses of the knight of the shire; but they prescribed, as they did in all cases, upon a general principle, to pay no tax, nor to attend any duty of whatever species, because they were the king's villains. The argument is drawn from the poverty of the boroughs, which ever since the conquest have been of no cosideration, and yet send members to parliament; which they could not do but by some privileges inherent in them, on account of a practice of the same kind in the Saxon times, when they were of more repute. It is certain, that many places now called boroughs were formerly towns or villages in ancient demesne of the king; and had, as such, writs directed to them to appear in parliament, that they might make a free gift or benevolence as the boroughs did; and from thence arose the custom of summoning them. This appears by sufficient records. And it appears by records also, that it was much at the discretion of the sheriff what boroughs he should return; a general writ was directed to him to return for all the boroughs in a shire; sometimes boroughs which had formerly sent members to parliament were quite passed over, and others never considered as such before were returned. What is called the prescription on this occasion was rather a sort of rule to direct the sheriff in the execution of his general power, than a right inherent in any boroughs. But this was long after the time of which we speak. In whatever manner we consider it, we must own that this subject, during the Saxon times, is extremely dark. One thing however is, I think, clear from the whole tenour of their government, and even from the tenour of the Norman constitution long after,—that their Wittenagemotes, or parliaments, were unformed, and that the rights, by which the members held their seats, were far from being exactly ascertained. The *Judicia Civitat. Lond.* afford a tolerable insight into the Saxon method of making and executing laws:—1st,

The king called together his bishops, and such other persons *as he thought proper*. This council, or Wittenagemote, having made such laws as seemed convenient, they then swore to the observance of them. The king sent a notification of these proceedings to each Burgmote, where the people of that court also swore to the observance of them, and confederated, by means of mutual strength and common charge, to prosecute delinquents against them. Nor did there at that time seem to be any other method of enforcing new laws or old. For as the very form of their government subsisted by a confederacy continually renewed, so when a law was made, it was necessary for its execution to have again recourse to confederacy, which was the great, and I should almost say the only, principle of the Anglo-Saxon government.

What rights the king had in this assembly is a matter of equal uncertainty.[1] The laws generally run in his name, with the assent of his wise men, &c. But considering the low estimation of royalty in those days, this may rather be considered as the voice of the executive magistrate, of the person who compiled the law, and propounded it to the Wittenagemote for their consent, than of a legislator dictating from his own proper authority. For then it seems the law was digested by the king or his council for the assent of the general assembly. That order is now reversed. All these things are, I think, sufficient to show of what a visionary nature those systems are, which would settle the ancient constitution in the most remote times exactly in the same form in which we enjoy it at this day; not considering that such mighty changes in manners, during so many ages, always must produce a considerable change in laws, and in the forms as well as the powers of all governments.

We shall next consider the nature of the laws passed in these assemblies, and the judicious manner of proceeding in these several courts, which we have described.

Saxon Laws. The Anglo-Saxons trusted more to the strictness of their police, and to the simple manners of their people, for the preservation of peace and order, than to accuracy or exquisite digestion of their laws, or to the severity

[1] *Debet enim rex omnia facere in regno et per judicium procerum regni. Debet justitiam per consilium procerum regni sui tenere.* Leges Ed. 7.

of the punishments which they inflicted.[1] The laws which remain to us of that people seem almost to regard two points only, the suppressing of riots and affrays, and the regulation of the several ranks of men in order to adjust the fines for delinquencies according to the dignity of the person offended, or to the quantity of the offence. In all other respects their laws seem very imperfect. They often speak in the style of counsel as well as that of command. In the collection of laws attributed to Alfred we have the decalogue transcribed, with no small part of the Levitical law; in the same code are inserted many of the Saxon institutions, though these two laws were in all respects as opposite as could possibly be imagined. These indisputable monuments of our ancient rudeness are a very sufficient confutation of the panegyrical declamations, in which some persons would persuade us that the crude institutions of an unlettered people had attained a height, which the united efforts of necessity, learning, inquiry, and experience, can hardly reach to in many ages. We must add, that, although as one people under one head there was some resemblance in the laws and customs of our Saxon ancestors throughout the kingdom, yet there was a considerable difference, in many material points, between the customs of the several shires; nay, that in different manors subsisted a variety of laws, not reconcilable with each other, some of which custom, that caused them, has abrogated; others have been overruled by laws, or public judgment, to the contrary; not a few subsist to this time.

The Saxon laws, imperfect and various as they were, served in some tolerable degree a people, who had by their constitution an eye on each other's concerns, and decided almost all matters of any doubt amongst them by methods, which, however inadequate, were extremely simple. They judged every controversy either by the conscience of the parties, or by the country's opinion of it, or what they judged an appeal to Providence. They were unwilling to submit to the trouble of weighing contradictory testimonies; and they were desti-

[1] The non-observance of a regulation of police was always heavily punished by barbarous nations. A slighter punishment was inflicted upon the commission of crimes. Among the Saxons most crimes were punished by fine: wandering from the highway, without sounding a horn, was death. So among the Druids, to enforce exactness in time at their meetings, he that came last after the time appointed was punished with death.

tute of those critical rules, by which evidence is sifted, the true distinguished from the false, the certain from the uncertain. Originally, therefore, the defendant in the suit was put to his oath, and if on oath he denied the debt, or the crime, with which he was charged, he was of course acquitted. But when the first fervours of religion began to decay, and fraud, and the temptations to fraud, to increase, they trusted no longer to the conscience of the party. They cited him to a higher tribunal,—the immediate judgment of God. Their trials were so many conjurations, and the magical ceremonies of barbarity and heathenism entered into law and religion. This supernatural method of process they called God's Dome; it is generally known by the name of *Ordeal*, which in the Saxon language signifies the Great Trial. This trial was made either by fire or water; that by fire was principally reserved for persons of rank; that by water decided the fate of the vulgar; sometimes it was at the choice of the party. A piece of iron, kept with a religious veneration in some monastery, which claimed this privilege as an honour, was brought forth into the church upon the day of trial; and it was there again consecrated to this awful purpose by a form of service still extant. A solemn mass was performed; and then the party accused appeared surrounded by the clergy, by his judges, and a vast concourse of people, suspended and anxious for the event; all that assisted purified themselves by a fast of three days; and the accused, who had undergone the same fast, and received the sacrament, took the consecrated iron of about a pound weight, heated red, in his naked hand, and in that manner carried it nine feet. This done, the hand was wrapped up, and sealed in the presence of the whole assembly. Three nights being passed, the seals were opened before all the people; if the hand was found without any sore inflicted by the fire, the party was cleared with universal acclamation; if on the contrary a raw sore appeared, the party, condemned by the judgment of Heaven, had no further plea or appeal. Sometimes the accused walked over nine hot irons; sometimes boiling water was used; into this the man dipped his hand to the arm. The judgment by water was accompanied by the solemnity of the same ceremonies. The culprit was thrown into a pool of water, in which if he did not sink he

Purgation by oath.

By ordeal.

was adjudged guilty, as though the element (they said) to which they had committed the trial of his innocency had rejected him.

Both these species of ordeal, though they equally appealed to God, yet went on different principles. In the fire ordeal a miracle must be wrought to acquit the party; in the water, a miracle was necessary to convict him. Is there any reason for this extraordinary distinction, or must we resolve it solely into the irregular caprices of the human mind? The greatest genius which has enlightened this age, seems in this affair to have been carried by the sharpness of his wit into a subtilty hardly to be justified by the way of thinking of that unpolished period. Speaking of the reasons for introducing this method of trial, "Qui ne voit," says he, "que chez un peuple exercé á manier des armes la peau rude et calleuse ne devoit pas recevoir assez l'impression du fer chaud pour qu'il y paroissoit trois jours après; et s'il y paroissoit c'est une marque que celui qui faisoit l'épreuve, étoit un efféminé." And this mark of effeminacy, he observes, in those warlike times, supposed that the man has resisted the principles of his education, that he is insensible to honour, and regardless of the opinion of his country. But supposing the effect of hot iron to be so slight even on the most callous hands, of which however there is reason to doubt, yet we can hardly admit this reasoning, when we consider that women were subjected to this fire ordeal, and that no other women than those of condition could be subjected to it. Montesquieu answers the objection, which he foresaw would be made, by remarking, that women might have avoided this proof, if they could find a champion to combat in their favour; and he thinks a just presumption might be formed against a woman of rank, who was so destitute of friends as to find no protector. It must be owned that the barbarous people all over Europe were much guided by presumptions in all their judicial proceedings; but how shall we reconcile all this with the custom of the Anglo-Saxons, among whom the ordeal was in constant use, and even for women, without the alternative of the combat, to which it appears this people were entire strangers? What presumption can arise from the event of the water ordeal, in which no callosity of hands, no bravery, no skill in arms, could be in any degree serviceable?

The causes of both may, with more success, be sought amongst the superstitious ideas of the ancient northern world. Amongst the Germans the administration of the law was in the hands of the priests or Druids.[1] And as the Druid worship paid the highest respect to the elements of fire and water, it was very natural that they, who abounded with so many conjurations for the discovery of doubtful facts, or future events, should make use of these elements in their divination. It may appear the greater wonder how the people came to continue so long, and with such obstinacy, after the introduction of Christianity, and in spite of the frequent injunctions of the pope, whose authority was then much venerated, in the use of a species of proof, the insufficiency of which a thousand examples might have detected. But this is perhaps not so unaccountable. Persons were not put to this trial unless there was pretty strong evidence against them: something sufficient to form what is equivalent to a *Corpus Delicti;* they must have been actually found guilty by the *duodecemvirale judicium*, before they could be subjected in any sort to the ordeal. It was in effect showing the accused an indulgence to give him this chance, even such a chance as it was, of an acquittal; and it was certainly much milder than the torture, which is used with full as little certainty of producing its end among the most civilized nations. And the ordeal without question frequently operated by the mere terror. Many persons, from a dread of the event, chose to discover rather than to endure the trial. Of those that did endure it many must certainly have been guilty. The innocency of some who suffered could never be known with certainty. Others by accident might have escaped; and this apparently miraculous escape had great weight in confirming the authority of this trial. How long did we continue in punishing innocent people for witchcraft, though experience might, to thinking persons, have frequently discovered the injustice of that proceeding: whilst to the generality a thousand equivocal appearances, confessions from fear of weakness, in fine, the torrent of popular

[1] The Druids judged not as magistrates, but as interpreters of the will of Heaven. *Ceterum neque animadvertere, neque vincire, neque verberare quidem nisi sacerdotibus permissum; non quasi in pœnam, nec ducis jussu, sed velut Deo imperante*, says Tacitus de Mor. German. 7.

prejudice rolled down through so many ages, conspired to support the delusion.

Compurgation. To avoid as much as possible this severe mode of trial, and at the same time to leave no inlet for perjury, another method of clearing was devised. The party accused of any crime, or charged in a civil complaint, appeared in court with some of his neighbours, who were called his compurgators; and when on oath he denied the charge, they swore that they believed his oath to be true.[1] These compurgators were at first to be three, afterwards five were required; in process of time twelve became necessary.[2] As a man might be charged by the opinion of the country, so he might also be discharged by it; twelve men were necessary to find him guilty, twelve might have acquitted him. If opinion supports all government, it not only supported in the general sense, but it directed every minute part in the Saxon polity. A man, who did not seem to have the good opinion of those among whom he lived, was adjudged to be guilty, or at least capable of being guilty, of every crime. It was upon this principle that a man who could not find the security of some tithing, or friborgh, for his behaviour,[3] he that was upon account of this universal desertion called friendless man, was by our ancestors condemned to death; a punishment which the lenity of the English laws in that time scarcely inflicted for any crime, however clearly proved; a circumstance which strongly marks the genius of the Saxon government.

Trial by the country. On the same principle from which the trial by the oath of compurgators was derived, was derived also the trial by the country, which was the method of taking

[1] *Si quis emendationem oppidorum vel pontium, vel profectionem militarem detrectaverit, compensit Regi* 120 *solidos, vel purget se, et nominentur ei* 14, *et eligantur* 11. Leges Canuti, 62.

[2] *Si accusatio sit et purgatio male succedat, judicet Episcopus.* Leges Canuti, 53.

[3] Every man not privileged, whether he be *paterfamilias*, (heorthfest,*) or *pedissequa*, (folghere,†) must enter into the hundred and tithing, and all above 12 to swear he will not be a thief, or consenting to a thief. Leges Canuti, 19.

* Heorthfeste—the same with Husfastene or Husfestene, i. e. the master of a family, from the Saxon Hearthfæst, i. e. fixed to the house or hearth.

† The Folgheres, or Folgeres, were the menial servants or followers of the Husfastene, or Housekeepers. Bracton, liber 3. Tract. 2, cap. 10. Leges Henrici I. cap. 8.

the sense of the neighbourhood on any dubious fact. If the matter was of great importance it was put in the full Shiremote; and if the general voice acquitted or condemned, decided for one party or the other, this was final in the cause. But then it was necessary that all should agree; for it does not appear that our ancestors, in those days, conceived how any assembly could be supposed to give an assent to a point concerning which several, who composed that assembly, thought differently. They had no idea that a body, composed of several, could act by the opinion of a small majority. But experience having shown that this method of trial was tumultuary and uncertain, they corrected it by the idea of compurgation. The party concerned was no longer put to his oath; he simply pleaded; the compurgators swore as before in ancient times; therefore the jury were strictly from the neighbourhood, and were supposed to have a personal knowledge of the man and the fact. They were rather a sort of evidence than judges; and from hence is derived that singularity in our laws, that most of our judgments are given upon verdict, and not upon evidence, contrary to the laws of most other countries. Neither are our juries bound, except by one particular statute, and in particular cases, to observe any positive testimony, but are at liberty to judge upon presumptions. These are the first rude chalkings out of our jurisprudence. The Saxons were extremely imperfect in their ideas of law, the civil institutions of the Romans, who were the legislators of mankind, having never reached them. The order of our courts, the discipline of our jury, by which it is become so elaborate a contrivance, and the introduction of a sort of scientific reason in the law, have been the work of ages.

As the Saxon laws did not suffer any transaction, whether of the sale of land or goods, to pass but in the shire, and before witnesses, so all controversies of them were concluded by what they called the *scyre witness*.[1] This was tried by the oaths of the parties, by *vivâ voce* testimony, and the producing of charters and records. Then the people, laity and clergy, whether by plurality of votes, or by what other means is not very certain, affirmed the testimony in favour

[1] *Si quis terram defenderit testimonio provinciæ*, &c. Leges Canuti, &c.; and sethe land gewerod hebbe be scyre gewitnesse.

of one of the claimants. Then the proceeding was signed, first by those who held the court, and then by the persons who affirmed the judgment, who also swore to it in the same manner.[1]

Punishments.

The Saxons were extremely moderate in their punishments; murder and treason were compounded; and a fine set for every offence. Forfeiture for felony was incurred only by those that fled. The punishment with death was very rare; with torture unknown. In all ancient nations, the punishment of crimes was in the family injured by them; particularly in case of murder.[2] This brought deadly feuds amongst the people, which, in the German nations particularly, subsisted through several generations. But as a fruitless revenge could answer little purpose to the parties injured, and was ruinous to the public peace, by the interposal of good offices they were prevailed upon to accept some composition in lieu of the blood of the aggressor, and peace was restored. The Saxon government did little more than act the part of arbitrator between the contending parties, exacted the payment of this composition, and reduced it to a certainty. However, the king, as the sovereign of all, and the sheriff, as the judicial officer, had their share in those fines. This unwillingness to shed blood, which the Saxon customs gave rise to, the Christian religion confirmed. Yet was it not altogether so imperfect as to have no punishment adequate to those great delinquencies which tend entirely to overturn a state,—public robbery, murder of the lord.[3]

[1] See in Madox, the case in Bishop of Bathes court. See also Brady 272, where the witnesses on one side offer to swear, or join battle with the other.

[2] *Parentibus occisi fiat emendatio vel guerra eorum portetur, unde Anglicè proverbium habetur, Bige spere of side, oththe bær. Eme lanceam à latere, aut fer.* Leg. Edward. 12.

The fines on the town or hundred.

Parentes murdrati sex Marcas haberent. Rex quadraginta. [This different from the ancient usage, where the king had half.] *Si parentes deessent, dominus ejus reciperet. Si dominum non haberet, filagus ejus, id est, fide cum eo ligatus.* LL. Inæ, 75.

[3] Purveyance, vide Leges Canuti, 67.

Si quis intestatus ex hâc vitâ decedat, sive sit per negligentiam ejus, sive per mortem subitaneam, tunc non assumat sibi dominus plus possessionis (æhta) ipsius quam justum armamentum; sed post mortem possessio (æht-

Origin of succession. As amongst the Anglo-Saxons government depended in some measure upon land-property, it will not be amiss to say something upon their manner of holding and inheriting their lands. It must not be forgot, that the Germans were of Scythian original, and had preserved that way of life, and those peculiar manners, which distinguished the parent nation. As the Scythians lived principally by pasturage and hunting, from the nature of that way of employment they were continually changing their habitations. But even in this case some small degree of agriculture was carried on; and therefore some sort of division of property became necessary. This division was made among each tribe by its proper chief. But their shares were allotted to the several individuals only for a year; lest they should come to attach themselves to any certain habitation; a settlement being wholly contrary to the genius of the Scythian manners.

Annual property.

Campestres melius Scythæ,
Quorum plaustra vagas rite trahunt domos,
Vivunt et rigidi Getæ,
Immetata quibus jugera liberas
Fruges et Cererem ferunt,
Nec cultura placet longior annuâ.

Estates for life. This custom of an annual property probably continued amongst the Germans as long as they remained in their own country; but when their conquests carried them into other parts, another object besides the possession of the land arose, which obliged them to make a change in this particular. In the distribution of the conquered lands, the ancient possessors of them became an object of consideration, and the management of these became one of the principal branches of their polity. It was expedient towards holding them in perfect subjection, that they should be habituated to obey one person, and that a kind of cliental relation should be created between them; therefore the land with the slaves, and the people in a state next to slavery annexed to it, were bestowed for life in the general distribution. When life-estates were once granted, it seemed a natural consequence, that inheritances

Inheritance.

gescyft) *ejus quàm justissimè distribuatur uxori, et liberis, et propinquis cognatis, cuilibet pro dignitate quæ ad eum pertinet.* Leges Canuti, 68.

should immediately supervene. When a durable connexion is created between a certain man and a certain portion of land by a possession for his whole life, and when his children have grown up, and have been supported on that land, it seems so great a hardship to separate them, and to deprive thereby the family of all means of subsisting, that nothing could be more generally desired, nor more reasonably allowed, than an inheritance; and this reasonableness was strongly enforced by the great change wrought in their affairs when life-estates were granted. Whilst, according to the ancient custom, lands were only given for a year, there was a rotation so quick, that every family came in its turn to be easily provided for, and had not long to wait; but the children of a tenant for life, when they lost the benefit of their father's possession, saw themselves as it were immured upon every side by the life-estates, and perceived no reasonable hope of a provision from any new arrangement. These inheritances began very early in England. By a law of King Alfred it appears that they were then of a very ancient establishment; and as such inheritances were intended for great stability, they fortified them by charters; and therefore they were called Book-land. This was done with regard to the possessions of the better sort; the meaner, who were called *Ceorles*, if they did not live in a dependence on some thane, held their small portions of land as an inheritance likewise; not by charter, but by a sort of prescription. This was called Folk-land. These estates of inheritance, both the greater and the meaner, were not fiefs; they were to all purposes allodial, and had hardly a single property of a feud; they descended equally to all the children, males and females, according to the custom of Gavelkind, a custom absolutely contrary to the genius of the feudal tenure; and whenever estates were granted in the later Saxon times by the bounty of the Crown, with an intent that they should be inheritable, so far were they from being granted with the complicated load of all the feudal services annexed, that in all the charters of that kind which subsist, they are bestowed with a full power of alienation, *et liberi ab omni seculari gravamine.* This was the general condition of those inheritances, which were derived from the right of original conquest, as well to all the soldiers as to the

Book-land.

Folk-land.

leader; and these estates, as it is said, were not even forfeitable, no not for felony, as if that were in some sort the necessary consequence of an inheritable estate. So far were they from resembling a fief. But there were other possessions, which bore a nearer resemblance to fiefs, at least in their first feeble and infantile state of the tenure, than those inheritances which were held by an absolute right in the proprietor. The great officers, who attended the court, commanded armies, or distributed justice, must necessarily be paid and supported; but in what manner could they be paid? In money they could not; because there was very little money then in Europe, and scarce any part of that little came into the prince's coffers. The only method of paying them was by allotting lands for their subsistence whilst they remained in his service. For this reason, in the original distribution, vast tracts of land were left in the hands of the king. If any served the king in a military command, his land may be said to have been in some sort held by knight-service. If the tenant was in an office about the king's person, this gave rise to sergeantry; the persons who cultivated his lands may be considered as holding by soccage. But the long train of services, that made afterwards the learning of the tenures, were then not thought of, because these feuds, if we may so call them, had not then come to be inheritances; which circumstance of inheritance gave rise to the whole feudal system. With the Anglo-Saxons the feuds continued to the last but a sort of pay or salary of office. The *Trinoda necessitas*, so much spoken of, which was to attend the king in his expeditions, and to contribute to the building of bridges, and repair of highways, never bound the lands by way of tenure, but as a political regulation, which equally affected every class and condition of men, and every species of possession.

Saxon fiefs.

The manner of succeeding to lands in England at this period was, as we have observed, by Gavelkind, an equal distribution amongst the children, males and females. The ancient northern nations had but an imperfect notion of political power. That the possessor of the land should be the governor of it was a simple idea; and their schemes extended but little further. It was not so in the Greek and Italian commonwealths. In those the pro-

Gavelkind.

perty of the land was in all respects similar to that of goods, and had nothing of jurisdiction annexed to it; the government there was a merely political institution. Amongst such a people the custom of distribution could be of no ill consequence, because it only affected property. But Gavelkind amongst the Saxons was very prejudicial; for as government was annexed to a certain possession in land, this possession, which was continually changing, kept the government in a very fluctuating state; so that their civil polity had in it an essential evil, which contributed to the sickly condition in which the Anglo-Saxon state always remained, as well as to its final dissolution.

BOOK III.—CHAPTER I.

VIEW OF THE STATE OF EUROPE AT THE TIME OF THE NORMAN INVASION.

BEFORE the period of which we are going to treat, England was little known or considered in Europe. Their situation, their domestic calamities, and their ignorance, circumscribed the views and politics of the English within the bounds of their own island. But the Norman conqueror threw down all these barriers. The English laws, manners, and maxims, were suddenly changed; the scene was enlarged; and the communication with the rest of Europe being thus opened, has been preserved ever since in a continued series of wars and negotiations. That we may therefore enter more fully into the matters which lie before us, it is necessary that we understand the state of the neighbouring continent at the time when this island first came to be interested in its affairs.

The northern nations, who had overran the Roman empire, were at first rather actuated by avarice than ambition, and were more intent upon plunder than conquest; they were carried beyond their original purposes, when they began to form regular governments, for which they had been prepared by no just ideas of legislation. For a long time, therefore, there was little of order in their affairs, or foresight in their designs. The Goths, the Burgundians, the Franks, the

Vandals, the Suevi, after they had prevailed over the Roman empire, by turns prevailed over each other in continual wars, which were carried on upon no principles of a determinate policy, entered into upon motives of brutality and caprice, and ended as fortune and rude violence chanced to prevail. Tumult, anarchy, confusion, overspread the face of Europe; and an obscurity rests upon the transactions of that time, which suffers us to discover nothing but its extreme barbarity.

Before this cloud could be dispersed, the Saracens, another body of barbarians from the south, animated by a fury not unlike that which gave strength to the northern irruptions, but heightened by enthusiasm, and regulated by subordination and uniform policy, began to carry their arms, their manners, and religion, into every part of the universe. Spain was entirely overwhelmed by the torrent of their armies; Italy, and the islands, were harassed by their fleets, and all Europe alarmed by their vigorous and frequent enterprises. Italy, who had so long sat the mistress of the world, was by turns the slave of all nations. The possession of that fine country was hotly disputed between the Greek emperor and the Lombards, and it suffered infinitely by that contention. Germany, the parent of so many nations, was exhausted by the swarms she had sent abroad.

However, in the midst of this chaos there were principles at work which reduced things to a certain form, and gradually unfolded a system, in which the chief movers and main springs were the papal and the imperial powers; the aggrandizement or diminution of which have been the drift of almost all the politics, intrigues, and wars, which have employed and distracted Europe to this day.

From Rome the whole western world had received its Christianity. She was the asylum of what learning had escaped the general desolation; and even in her ruins she preserved something of the majesty of her ancient greatness. On these accounts she had a respect and a weight, which increased every day amongst a simple religious people, who looked but a little way into the consequences of their actions. The rudeness of the world was very favourable for the establishment of an empire of opinion. The moderation, with which the popes at first exerted this empire, made its growth

unfelt until it could no longer be opposed. And the policy of later popes, building on the piety of the first, continually increased it; and they made use of every instrument but that of force. They employed equally the virtues and the crimes of the great; they favoured the lust of kings for absolute authority, and the desire of subjects for liberty; they provoked war, mediated peace; and took advantage of every turn in the minds of men, whether of a public or private nature, to extend their influence, and push their power from ecclesiastical to civil; from subjection to independency; from independency to empire.

France had many advantages over the other parts of Europe. The Saracens had no permanent success in that country. The same hand, which expelled those invaders, deposed the last of a race of heavy and degenerate princes, more like eastern monarchs than German leaders, and who had neither the force to repel the enemies of their kingdom, nor to assert their own sovereignty. This usurpation placed on the throne princes of another character; princes who were obliged to supply their want of title by the vigour of their administration. The French monarch had need of some great and respected authority to throw a veil over his usurpation, and to sanctify his newly-acquired power by those names and appearances, which are necessary to make it respectable to the people. On the other hand, the pope, who hated the Grecian empire, and equally feared the success of the Lombards, saw with joy this new star arise in the north, and gave it the sanction of his authority. Presently after he called it to his assistance. Pepin passed the Alps, relieved the pope, and invested him with the dominion of a large country in the best part of Italy.

Charlemagne pursued the course which was marked out for him, and put an end to the Lombard kingdom, weakened by the policy of his father and the enmity of the popes, who never willingly saw a strong power in Italy. Then he received from the hand of the pope the imperial crown, sanctified by the authority of the holy see, and with it the title of emperor of the Romans; a name venerable from the fame of the old empire, and which was supposed to carry great and unknown prerogatives; and thus the empire rose again out of its ruins in the West; and what is remarkable, by means

of one of those nations which had helped to destroy it. If we take in the conquests of Charlemagne, it was also very near as extensive as formerly; though its constitution was altogether different, as being entirely on the northern model of government.

From Charlemagne the pope received in return an enlargement and a confirmation of his new territory. Thus the papal and imperial powers mutually gave birth to each other. They continued for some ages, and in some measure still continue, closely connected, with a variety of pretensions upon each other, and on the rest of Europe.

Though the imperial power had its origin in France, it was soon divided into two branches, the Gallic and the German. The latter alone supported the title of empire; but the power being weakened by this division, the papal pretensions had the greater weight. The pope, because he first revived the imperial dignity, claimed a right of disposing of it, or at least of giving validity to the election of the emperor. The emperor, on the other hand, remembering the rights of those sovereigns, whose title he bore, and how lately the power, which insulted him with such demands, had arisen from the bounty of his predecessors, claimed the same privileges in the election of a pope. The claims of both were somewhat plausible; and they were supported, the one by force of arms, and the other by ecclesiastical influence, powers which in those days were very nearly balanced. Italy was the theatre upon which this prize was disputed. In every city the parties in favour of each of the opponents were not far from an equality in their numbers and strength. Whilst these parties disagreed in the choice of a master, by contending for a choice in their subjection they grew imperceptibly into freedom, and passed through the medium of faction and anarchy into regular commonwealths. Thus arose the republics of Venice, of Genoa, of Florence, Sienna, and Pisa, and several others. These cities, established in this freedom, turned the frugal and ingenious spirit contracted in such communities to navigation and traffic; and pursuing them with skill and vigour, whilst commerce was neglected and despised by the rustic gentry of the martial governments, they grew to a considerable degree of wealth, power, and civility.

The Danes, who in this latter time preserved the spirit and the numbers of the ancient Gothic people, had seated themselves in England, in the Low Countries, and in Normandy. They passed from thence to the southern part of Europe, and in this romantic age gave rise in Sicily and Naples to a new kingdom, and a new line of princes.

All the kingdoms on the continent of Europe were governed nearly in the same form; from whence arose a great similitude in the manners of their inhabitants. The feodal discipline extended itself everywhere, and influenced the conduct of the courts, and the manners of the people, with its own irregular martial spirit. Subjects, under the complicated laws of various and rigorous servitude, exercised all the prerogatives of sovereign power. They distributed justice, they made war and peace at pleasure. The sovereign, with great pretensions, had but little power; he was only a greater lord among great lords, who profited of the differences of his peers; therefore no steady plan could be well pursued, either in war or peace. This day a prince seemed irresistible at the head of his numerous vassals, because their duty obliged them to war, and they performed this duty with pleasure. The next day saw this formidable power vanish like a dream, because this fierce undisciplined people had no patience, and the time of the feudal service was contained within very narrow limits. It was therefore easy to find a number of persons at all times ready to follow any standard, but it was hard to complete a considerable design, which required a regular and continued movement. This enterprising disposition in the gentry was very general, because they had little occupation or pleasure but in war; and the greatest rewards did then attend personal valour and prowess. All that professed arms became in some sort on an equality. A knight was the peer of a king; and men had been used to see the bravery of private persons opening a road to that dignity. The temerity of adventurers was much justified by the ill order of every state, which left it a prey to almost any who should attack it with sufficient vigour. Thus, little checked by any superior power, full of fire, impetuosity, and ignorance, they longed to signalize themselves wherever an honourable danger called them; and wherever that invited, they did not weigh very deliberately the probability of success.

The knowledge of this general disposition in the minds of men will naturally remove a great deal of our wonder at seeing an attempt, founded on such slender appearances of right, and supported by a power so little proportioned to the undertaking as that of William, so warmly embraced and so generally followed, not only by his own subjects, but by all the neighbouring potentates. The counts of Anjou, Bretagne, Ponthieu, Boulogne, and Poictou, sovereign princes; adventurers from every quarter of France, the Netherlands, and the remotest parts of Germany, laying aside their jealousies and enmities to one another, as well as to William, ran with an inconceivable ardour into this enterprise; captivated with the splendour of the object, which obliterated all thoughts of the uncertainty of the event. William kept up this fervour by promises of large territories to all his allies and associates in the country to be reduced by their united efforts. But after all it became equally necessary to reconcile to his enterprise the three great powers, of whom we have just spoken, whose disposition must have had the most influence on his affairs.

His feudal lord the king of France was bound by his most obvious interests to oppose the further aggrandizement of one already too potent for a vassal; but the king of France was then a minor; and Baldwin, Earl of Flanders, whose daughter William had married, was regent of the kingdom. This circumstance rendered the remonstrance of the French council against his design of no effect; indeed the opposition of the council itself was faint; the idea of having a king under vassalage to their Crown might have dazzled the more superficial courtiers; whilst those who thought more deeply were unwilling to discourage an enterprise, which they believed would probably end in the ruin of the undertaker. The emperor was in his minority, as well as the king of France; but by what arts the duke prevailed upon the imperial council to declare in his favour, whether or no by an idea of creating a balance to the power of France, if we can imagine that any such idea then subsisted, is altogether uncertain; but it is certain that he obtained leave for the vassals of the empire to engage in his service, and that he made use of this permission. The pope's consent was obtained with still less difficulty. William had shown himself in many instances a friend to the church, and a favourer of the clergy. On this

occasion he promised to improve those happy beginnings in proportion to the means he should acquire by the favour of the holy see. It is said, that he even proposed to hold his new kingdom as a fief from Rome. The pope, therefore, entered heartily into his interests; he excommunicated all those that should oppose his enterprise, and sent him, as a means of insuring success, a consecrated banner.

CHAPTER II.

REIGN OF WILLIAM THE CONQUEROR.

After the battle of Hastings, the taking of Dover, the surrender of London, and the submission of the principal nobility, William had nothing left but to order in the best manner the kingdom he had so happily acquired. Soon after his coronation, fearing the sudden and ungoverned motions of so great a city, new to subjection, he left London until a strong citadel could be raised to overawe the people. This was built where the Tower of London now stands. Not content with this, he built three other strong castles in situations as advantageously chosen, at Norwich, at Winchester, and at Hereford, securing not only the heart of affairs, but binding down the extreme parts of the kingdom. And as he observed from his own experience the want of fortresses in England, he resolved fully to supply that defect, and guard the kingdom both against internal and foreign enemies. But he fortified his throne yet more strongly by the policy of good government. To London he confirmed by charter the liberties it had enjoyed under the Saxon kings; and endeavoured to fix the affections of the English in general by governing them with equity according to their ancient laws, and by treating them on all occasions with the most engaging deportment. He set up no pretences which arose from absolute conquest. He confirmed their estates to all those who had not appeared in arms against him, and seemed not to aim at subjecting the English to the Normans, but to unite the two nations under the wings of a common parental care. If the Normans received estates, and held lucrative offices, and were raised by wealthy

A. D. 1066.

matches in England, some of the English were enriched with lands and dignities, and taken into considerable families in Normandy. But the king's principal regards were showed to those by whose bravery he had attained his greatness. To some he bestowed the forfeited estates, which were many and great, of Harold's adherents; others he satisfied from the treasures his rival had amassed; and the rest, quartered upon wealthy monasteries, relied patiently on the promises of one whose performances had hitherto gone hand in hand with his power. There was another circumstance, which conduced much to the maintaining, as well as to the making, his conquest. The posterity of the Danes, who had finally reduced England under Canute the Great, were still very numerous in that kingdom, and in general not well liked by, nor well affected to, the old Anglo-Saxon inhabitants. William wisely took advantage of this enmity between the two sorts of inhabitants, and the alliance of blood, which was between them and his subjects. In the body of laws which he published he insists strongly on this kindred, and declares that the Normans and Danes ought to be as sworn brothers against all men; a policy which probably united these people to him; or at least so confirmed the ancient jealousy which subsisted between them and the original English, as to hinder any cordial union against his interests.

When the king had thus settled his acquisitions by all the methods of force and policy, he thought it expedient to visit his patrimonial territory, which, with regard to its internal state, and the jealousies which his additional greatness revived in many of the bordering princes, was critically situated. He appointed to the regency in his absence, his brother Odo, an ecclesiastic, whom he had made bishop of Bayeux in France, and Earl of Kent, with great power and pre-eminence in England; a man bold, fierce, ambitious, full of craft, imperious, and without faith, but well versed in all affairs, vigilant and courageous. To him he joined William Fitz-Auber, his justiciary, a person of consummate prudence and great integrity. But not depending on this disposition, to secure his conquest, as well as to display its importance abroad, under a pretence of honour, he carried with him all the chiefs of the English nobility, the popular Earls Edwin and Morcar, and what was of most importance, Edgar Athel

ing, the last branch of the royal stock of the Anglo-Saxon kings, and infinitely dear to all the people.

The king managed his affairs abroad with great address, and covered all his negotiations for the security of his Norman dominions under the magnificence of continual feasting and unremitted diversion, which, without an appearance of design, displayed his wealth and power, and by that means facilitated his measures. But whilst he was thus employed, his absence from England gave an opportunity to several humours to break out, which the late change had bred, but which the amazement likewise produced by that violent change, and the presence of their conqueror, wise, vigilant, and severe, had hitherto repressed. The ancient line of their kings displaced; the only thread on which it hung carried out of the kingdom, and ready to be cut off by the jealousy of a merciless usurper; their liberties none by being precarious, and the daily insolences and rapine of the Normans intolerable: these discontents were increased by the tyranny and rapaciousness of the regent; and they were fomented from abroad by Eustace, Count of Boulogne. But the people, though ready to rise in all parts, were destitute of leaders; and the insurrections actually made were not carried on in concert, nor directed to any determinate object. A. D. 1067. So that the king, returning speedily, and exerting himself everywhere with great vigour, in a short time dissipated these ill-formed projects. However, so general a dislike to William's government had appeared on this occasion, that he became in his turn disgusted with his subjects, and began to change his maxims of rule to a rigour, which was more conformable to his advanced age, and the sternness of his natural temper. He resolved, since he could not gain the affections of his subjects, to find such matter for their hatred as might weaken them, and fortify his own authority against the enterprises which that hatred might occasion. He revived the tribute of Danegelt, so odious from its original cause, and that of its revival, which he caused to be strictly levied throughout the kingdom. He erected castles at Nottingham, at Warwick, and at York, and filled them with Norman garrisons; he entered into a stricter inquisition for the discovery of the estates forfeited on his coming in; paying no regard to the privileges of the ecclesiastics, he

seized upon the treasures, which, as in an inviolable asylum, the unfortunate adherents to Harold had deposited in monasteries. At the same time he entered into a resolution of deposing all the English bishops, on none of whom he could rely, and filling their places with Normans. But he mitigated the rigour of these proceedings by the wise choice he made in filling the places of those whom he had deposed; and gave by that means these violent changes the air rather of reformation than oppression. He began with Stigand, archbishop of Canterbury. A synod was called, in which, for the first time in England, the pope's legate à latere is said to have presided. In this council, Stigand, for simony and for other crimes, of which it is easy to convict those who are out of favour, was solemnly degraded from his dignity. The king filled his place with Lanfranc, an Italian. By his whole conduct he appeared resolved to reduce his subjects of all orders to the most perfect obedience.

The people loaded with new taxes, the nobility degraded and threatened, the clergy deprived of their immunities and influence, joined in one voice of discontent; and stimulated each other to the most desperate resolutions. The king was not unapprized of these motions, nor negligent of them. It is thought he meditated to free himself from much of his uneasiness by seizing those men, on whom the nation in its distresses used to cast its eyes for relief. But whilst he digested these measures, Edgar Atheling, Edwin and Morcar, Waltheof, the son of Seward, and several others, eluded his vigilance, and escaped into Scotland, where they were received with open arms by King Malcolm. The Scottish monarch on this occasion married the sister of Edgar; and this match engaged him more closely to the accomplishment of what his gratitude to the Saxon kings, and the rules of good policy, had before inclined him. He entered at last into the cause of his brother-in-law and the distressed English; he persuaded the king of Denmark to enter into the same measures, who agreed to invade England with a fleet of a thousand ships. Drone, an Irish king, declared in their favour, and supplied the sons of Earl Goodwin with vessels and men, with which they held the English coast in continual alarms.

A. D. 1068.

Whilst the forces of this powerful confederacy were collect-

ing on all sides, and prepared to enter England, equa. dangers threatened from within the kingdom. Edric, the Forester, a very brave and popular Saxon, took up arms in the counties of Hereford and Salop, the country of the ancient Silures, and inhabited by the same warlike and untamable race of men. The Welsh strengthened him with their forces, and Cheshire joined in the revolt. Hereward le Wake, one of the most brave and indefatigable soldiers of his time, rushed with a numerous band of fugitives and outlaws from the fens of Lincoln and the Isle of Ely; from whence, protected by the situation of the place, he had for some time carried on an irregular war against the Normans. The sons of Goodwin landed with a strong body in the west; the fire of rebellion ran through the kingdom; Cornwall, Devon, Dorset, at once threw off the yoke. Daily skirmishes were fought in every part of the kingdom with various success, and with great bloodshed. The Normans retreated to their castles, which the English had rarely skill or patience to master; out of these they sallied from time to time, and asserted their dominion. The conquered English for a moment resumed their spirit; the forests and morasses, with which this island then abounded, served them for fortifications, and their hatred to the Normans stood in the place of discipline; each man, exasperated by his own wrongs, avenged them in his own manner: everything was full of blood and violence. Murders, burnings, rapine, and confusion overspread the whole kingdom. During these distractions, several of the Normans quitted the country, and gave up their possessions, which they thought not worth holding in continual horror and danger. In the midst of this scene of disorder the king alone was present to himself and to his affairs. He first collected all the forces on whom he could depend within the kingdom, and called powerful succours from Normandy. Then he sent a strong body to repress the commotions in the west, but he reserved the greatest force and his own presence against the greatest danger, which menaced from the north. The Scots had penetrated as far as Durham; they had taken the castle, and put the garrison to the sword. A like fate attended York from the Danes, who had entered the Humber with a formidable fleet. They put this city into the hands of the English

A. D. 1069.

mal-contents, and thereby influenced all the northern counties in their favour. William, when he first perceived the gathering of the storm, endeavoured, and with some success, to break the force of the principal blow by a correspondence at the court of Denmark; and now he entirely blunted the weapon by corrupting, with a considerable sum, the Danish general. It was agreed, to gratify that piratical nation, that they should plunder some part of the coast, and depart without further disturbance. By this negotiation the king was enabled to march with an undissipated force against the Scots and the principal body of the English. Everything yielded. The Scots retired into their own country. Some of the most obnoxious of the English fled along with them. One desperate party, under the brave Waltheof, threw themselves into York, and ventured alone to resist his victorious army. William pressed the siege with vigour; and, notwithstanding the prudent dispositions of Waltheof, and the prodigies of valour he displayed in its defence, standing alone in the breach, and maintaining his ground gallantly and successfully, the place was at last reduced by famine. The king left his enemies no time to recover this disaster; he followed his blow, and drove all, who adhered to Edgar Atheling, out of all the countries northward of the Humber. This tract he resolved entirely to depopulate, influenced by revenge, and by distrust of the inhabitants, and partly with a view of opposing an hideous desert of 60 miles in extent, as an impregnable barrier against all attempts of the Scots in favour of his disaffected subjects. The execution of this barbarous project was attended with all the havoc and desolation that it seemed to threaten: one hundred thousand are said to have perished by cold, penury, and disease. The ground lay untilled throughout that whole space for upwards of nine years. Many of the inhabitants both of this and all other parts of England fled into Scotland; but they were so received by King Malcolm as to forget that they had lost their country. This wise monarch gladly seized so fair an opportunity, by the exertion of a benevolent policy, to people his dominions, and to improve his native subjects. He received the English nobility according to their rank; he promoted them to offices according to their merit; and enriched them by considerable estates

A. D. 1070.

from his own demesne. From these noble refugees several considerable families in Scotland are descended.

William, on the other hand, amidst all the excesses which the insolence of victory and the cruel precautions of usurped authority could make him commit, gave many striking examples of moderation and greatness of mind. He pardoned Waltheof, whose bravery he did not the less admire because it was exerted against himself. He restored him to his ancient honours and estates; and thinking his family strengthened by the acquisition of a gallant man, he bestowed upon him his niece Judith in marriage. On Edric the Forester, who lay under his sword, in the same generous manner he not only bestowed his life, but honoured it with an addition of dignity.

The king, having thus by the most politic and the most courageous measures, by art, by force, by severity, and by clemency, dispelled those clouds, which had gathered from every quarter to overwhelm him, returned triumphant to Winchester; where, as if he had newly acquired the kingdom, he was crowned with great solemnity. After this he proceeded to execute the plan he had long proposed of modelling the state according to his own pleasure, and of fixing his authority upon an immovable foundation.

There were few of the English who in the late disturbances had not either been active against the Normans, or shown great disinclination to them. Upon some right, or some pretence, the greatest part of their lands were adjudged to be forfeited. William gave these lands to Normans, to be held by the tenure of knight-service, according to the law, which modified that service in all parts of Europe. These people he chose, because he judged they must be faithful to the interest on which they depended; and this tenure he chose, because it raised an army without expense, called it forth at the least warning, and seemed to secure the fidelity of the vassal by the multiplied ties of those services which were inseparably annexed to it. In the establishment of these tenures, William only copied the practice, which was now become very general. One fault, however, he seems to have committed in this distribution; the immediate vassals of the Crown were too few; the tenants *in capite* at the end

of this reign did not exceed seven hundred; the eyes of the subject met too many great objects in the state besides the state itself; and the dependence of the inferior people was weakened by the interposal of another authority between them and the Crown; and this without being at all serviceable to liberty. The ill consequence of this was not so obvious, whilst the dread of the English made a good correspondence between the sovereign and the great vassals absolutely necessary; but it afterwards appeared, and in a light very offensive to the power of our kings.

As there is nothing of more consequence in a state than the ecclesiastical establishment, there was nothing to which this vigilant prince gave more of his attention. If he owed his own power to the influence of the clergy, it convinced him how necessary it was to prevent that engine from being employed in its turn against himself. He observed, that, besides the influence they derived from their character, they had a vast portion of that power which always attends property. Of about 60,000 knights' fees, which England was then judged to contain, 28,000 were in the hands of the clergy; and these they held discharged of all taxes, and free from every burthen of civil or military service; a constitution undoubtedly no less prejudicial to the authority of the state, than detrimental to the strength of the nation, deprived of so much revenue, so many soldiers, and of numberless exertions of art and industry, which were stifled by holding a third of the soil in dead hands out of all possibility of circulation. William in a good measure remedied these evils, but with the great offence of all the ecclesiastic orders. At the same time that he subjected the church lands to military service, he obliged each monastery and bishoprick to the support of soldiers, in proportion to the number of knights' fees that they possessed. No less jealous was he of the papal pretensions, which having favoured so long as they served him as the instruments of his ambition, he afterwards kept within very narrow bounds. He suffered no communication with Rome but by his knowledge and approbation. He had a bold and ambitious pope to deal with, who yet never proceeded to extremities with nor gained one advantage over William during his whole reign; although he had by an ex-

press law reserved to himself a sort of right in approving the pope chosen, by forbidding his subjects to yield obedience to any whose right the king had not acknowledged.

To form a just idea of the power and greatness of this king, it will be convenient to take a view of his revenue. And I the rather choose to dwell a little upon this article, as nothing extends to so many objects as the public finances; and consequently nothing puts in a clearer or more decisive light the manners of the people, and the form, as well as the powers, of government at any period.

The first part of this consisted of the demesne. The lands of the Crown were, even before the conquest, very extensive. The forfeitures consequent to that great change had considerably increased them. It appears from the record of Domesday, that the king retained in his own hands no fewer than 1400 manors. This alone was a royal revenue. However, great as it really was, it has been exaggerated beyond all reason. Ordericus Vitalis, a writer almost contemporary, asserts that this branch alone produced a thousand pounds a day;[1] which, valuing the pound, as it was then estimated, at a real pound of silver, and then allowing for the difference in value since that time, will make near twelve millions of our money. This account, coming from such an authority, has been copied without examination by all the succeeding historians. If we were to admit the truth of it, we must entirely change our ideas concerning the quantity of money which then circulated in Europe. And it is a matter altogether monstrous and incredible in an age when there was little traffic in this nation, and the traffic of all nations circulated but little real coin; when the tenants paid the greatest part of their rents in kind; and when it may be greatly doubted whether there was so much current money in the nation as is said to have come into the king's coffers from this one branch of his revenue only. For it amounts to a twelfth part of all the circulating species, which a trade, infinitely more extensive, has derived from sources, infinitely more exuberant, to this wealthy nation, in this improved age. Neither must we think, that the whole revenue of this prince ever rose to such a sum. The great fountain which fed his treasury must have

[1] I have known myself great mistakes in calculation by computing, as the produce of every day in the year, that of one extraordinary day.

been Danegelt, which, upon any reasonable calculation, could not possibly exceed 120,000 pounds of our money, if it ever reached that sum. William was observed to be a great hoarder, and very avaricious; his army was maintained without any expense to him; his demesne supported his household; neither his neccssary nor his voluntary expenses were considerable. Yet the effects of many years scraping and hoarding left at his death but 60,000 pounds, not the sixth part of one year's income, according to this account, of one branch of his revenue; and this was then esteemed a vast treasure. Edgar Atheling, on being reconciled to the king, was allowed a mark a day for his expenses, and he was thought to be allowed sufficiently; though he received it in some sort as an equivalent for his right to the Crown. I venture on this digression, because writers in an ignorant age, making guesses at random, impose on more enlightened times, and affect by their mistakes many of our reasonings on affairs of consequence; and it is the error of all ignorant people to rate unknown times, distances, and sums, very far beyond their real extent. There is even something childish and whimsical in computing this revenue, as the original author has done, at so much a day. For my part, I do not imagine it so difficult to come at a pretty accurate decision of the truth or falsehood of this story.

The above-mentioned manors are charged with rents, from five to a hundred pounds each. The greatest number of those I have seen in print are under fifty; so that we may safely take that number as a just medium: and then the whole amount of the demesne rents will be 70,000 pounds, or 210,000 of our money. This, though almost a fourth less than the sum stated by Vitalis, still seems a great deal too high, if we should suppose the whole sum, as that author does, to be paid in money, and that money to be reckoned by real pounds of silver. But we must observe, that, when sums of money are set down in old laws and records, the interpretation of those words, pounds and shillings, is for the most part oxen, sheep, corn, and provision. When real coin money was to be paid, it was called white money, or *argentum album*, and was only in a certain stipulated proportion to what was rendered in kind; and that proportion generally very low This method of paying rent, though it entirely

overturns the prodigious idea of that monarch's pecuniary wealth, as far from being less conducive to his greatness. It enabled him to feed a multitude of people; one of the surest and largest sources of influence, and which always out-buys money in the traffic of affections. This revenue, which was the chief support of the dignity of our Saxon kings, was considerably increased by the revival of Danegelt, of the imposition of which we have already spoken, and which is supposed to have produced an annual income of 40,000 pounds of money, as then valued.

The next branch of this king's revenue were the feudal duties, by him first introduced into England, namely, ward, marriage, relief, and aids. By the first, the heir of every tenant, who held immediately from the Crown, during his minority was in ward for his body and his land to the king; so that he had the formation of his mind at that early and ductile age to mould to his own purposes, and the entire profits of his estate, either to augment his demesne, or to gratify his dependants. And as we have already seen how many and how vast estates, or rather princely possessions, were then held immediately of the Crown, we may comprehend how important an article this must have been.

Though the heir had attained his age before the death of his ancestor, yet the king intruded between him and his inheritance, and obliged him to redeem or, as the term then was, to relieve it. The quantity of this relief was generally pretty much at the king's discretion, and often amounted to a very great sum.

But the king's demands on his rents in chief were not yet satisfied. He had a right and interest in the marriage of heirs, both males and females, virgins and widows; and either bestowed them at pleasure on his favourites, or sold them to the best bidder. The king received for the sale of one heiress the sum of £20,000, or £60,000 of our present money; and this at a period when the chief estates were much reduced. And from hence was derived a great source of revenue, if this right were sold; of influence and attachment, if bestowed.

Under the same head of feudal duties were the casual aids to knight his eldest son, and marry his eldest daughter. These duties could be paid but once, and though not considerable, eased him in these articles of expenses.

After the feudal duties, rather in the order than in point of value, was the profit which arose from the sale of justice. No man could then sue in the king's court by a common or public right, or without paying largely for it; sometimes the third, and sometimes even half, the value of the estate or debt sued for. These presents were called oblations; and the records preceding Magna Charta, and for some time after, are full of them. And, as the king thought fit, this must have added greatly to his power, or wealth, or indeed to both.

The fines and amercements were another branch; and this at a time when disorders abounded, and almost every disorder was punished by a fine, was a much greater article than at first could readily be imagined; especially when we consider that there were no limitations in this point but the king's mercy, particularly in all offences relating to the forest, which were of various kinds, and very strictly inquired into. The sale of offices was not less considerable. It appears that all offices at that time were, or might be, legally and publicly sold; that the king had many and very rich employments in his gift, and, though it may appear strange, not inferior to, if they did not exceed in number and consequence, those of our present establishment. At one time the great seal was sold for 3000 marks. The office of sheriff was then very lucrative; this charge was almost always sold. Sometimes a county paid a sum to the king, that he might appoint a sheriff whom they liked; sometimes they paid as largely to prevent him from appointing a person disagreeable to them; and thus the king had often, from the same office, a double profit in refusing one candidate and approving the other. If some offices were advantageous, others were burthensome; and the king had the right, or was at least in the unquestioned practice, of forcing his subjects to accept these employments, or to pay for their immunity; by which means he could either punish his enemies or augment his wealth, as his avarice or his resentments prevailed.

The greatest part of the cities and trading towns were under his particular jurisdiction, and indeed in a state not far removed from slavery. On these he laid a sort of imposition at such a time, and in such a proportion, as he thought fit. This was called a *talliage*. If the towns did not forthwith pay the sum at which they were rated, it was not unusual, for their

punishment, to double their exaction, and to proceed in levying it by nearly the same methods, and in the same manner, now used to raise a contribution in an enemy's country.

But the Jews were a fund almost inexhaustible. They were slaves to the king in the strictest sense; insomuch that, besides the various talliages and fines extorted from them, none succeeded to the inheritance of his father without the king's licence and a heavy composition. He sometimes even made over a wealthy Jew as a provision to some of his favourites for life. They were almost the only persons who exercised usury, and thus drew to themselves the odium and wealth of the whole kingdom; but they were only a canal, through which it passed to the royal treasury. And nothing could be more pleasing and popular than such exactions; the people rejoiced when they saw the Jews plundered, not considering that they were a sort of agents for the Crown, who, in proportion to the heavy taxes they paid, were obliged to advance the terms, and enforce with greater severity the execution, of their usurious contracts. Through them almost the whole body of the nobility were in debt to the king; and when he thought proper to confiscate the effects of the Jews, the securities passed into his hands; and by this means he must have possessed one of the strongest and most terrible instruments of authority that could possibly be devised, and the best calculated to keep the people in an abject and slavish dependence.

The last general head of his revenue were the customs, prisages, and other impositions upon trade. Though the revenue arising from traffic in this rude period was much limited by the then smallness of its object, this was compensated by the weight and variety of the exactions levied, by an occasional exertion of arbitrary power, or the more uniform system of hereditary tyranny. Trade was restrained, or the privilege granted, on the payment of tolls, passages, panages, pontages, and innumerable other vexatious imposts, of which only the barbarous and almost unintelligible names subsist at this day.

These were the most constant and regular branches of the revenue. But there were other ways innumerable, by which money, or an equivalent in cattle, poultry, horses, hawks, and dogs, accrued to the exchequer. The king's interposition in

marriages, even where there was no pretence from tenure, was frequently bought, as well as in other negotiations of less moment, for composing of quarrels, and the like; and indeed some appear on the records of so strange and even ludicrous a nature, that it would not be excusable to mention them, if they did not help to show from how many minute sources this revenue was fed, and how the king's power descended to the most inconsiderable actions of private life.[1] It is not easy to penetrate into the true meaning of all these particulars, but they equally suffice to show the character of government in those times. A prince, furnished with so many means of distressing enemies and gratifying friends, and possessed of so ample a revenue entirely independent of the affections of his subjects, must have been very absolute in substance and effect, whatever might have been the external forms of government.

For the regulation of all these revenues, and for determining all questions which concerned them, a court was appointed upon the model of a court of the same nature, said to be of ancient use in Normandy, and called the exchequer.

There was nothing in the government of William conceived in a greater manner, or more to be commended, than the general survey he took of his conquest. An inquisition was made throughout the kingdom concerning the quantity of land which was contained in each county; the name of the deprived and the present proprietor; the stock of slaves, and cattle of every kind, which it contained. All these were registered in a book, each article beginning with the king's property, and proceeding downward, according to the rank of the proprietors, in an excellent order; by which might be known at one glance the true state of the royal revenues, the wealth, consequence, and natural connexions of every person in the kingdom; in order to ascertain the taxes that might be imposed, and to serve purposes in the state as well as in civil causes, to be general

A. D. 1081.

[1] The bishop of Winchester fined for not putting the king in mind to give a girdle to the Countess of Albemarle.—*Robertus de Vallibus debet quinque optimos palafredos, ut rex taceret de uxore Henrici Pinel.*—The wife of Hugh de Nevil fined in two hundred hens, that she might lie with her husband for one night;—another, that he might rise from his infirmity; a third, that he might eat.

and uncontrollable evidence of property. This book is called Domesday, or the Judgment Book, and still remains a grand monument of the wisdom of the Conqueror; a work in all respects useful, and worthy of a better age.

The Conqueror knew very well how much discontent must have arisen from the great revolutions, which his conquest produced in all men's property, and in the general tenor of the government. He, therefore, as much as possible to guard against every sudden attempt, forbade any light or fire to continue in any house after a certain bell, called curfew, had sounded. This bell rung at about eight in the evening.

There was policy in this; and it served to prevent the numberless disorders, which arose from the late civil commotions. For the same purpose of strengthening his authority, he introduced the Norman law, not only in its substance, but in all its forms; and ordered that all proceedings should be had according to that law in the French language.[1] The change wrought by the former part of this regulation could not have been very grievous; and it was partly the necessary consequence of the establishment of the new tenures, and which wanted a new law to regulate them. In other respects the Norman institutions were not very different from the English. But to force, against nature, a new language upon a conquered people, to make them strangers in those courts of justice in which they were still to retain a considerable share, to be reminded every time they had recourse to government for protection of the slavery in which it held them, this is one of those acts of superfluous tyranny, from which very few conquering nations or parties have forborne, though no way necessary, but often prejudicial, to their safety. These severities, and affronts more galling than severities, drove the English to another desperate attempt, which was the last convulsive effort of their expiring freedom. Several nobles, prelates, and others whose estates had been confiscated, or who were in daily apprehension of their confiscation, fled into the fens of Lincoln and Ely, where Hereward still maintained his ground. This unadvised step completed the ruin of the little English interest that remained. William hastened to fill up the sees of the bishops, and the estates of the

[1] For some particulars of the condition of the English of this time, vide Eadmer, p 110.

nobles, with his Norman favourites. He pressed the fugitives with equal vivacity; and, at once to cut off all the advantage they derived from their situation, he penetrated into the Isle of Ely by a wooden bridge, two miles in length; and by the greatness of the design, and rapidity of the execution, as much as by the vigour of his charge, compelled them to surrender at discretion. Hereward alone escaped, who disdained to surrender, and had cut his way through his enemies, carrying his virtue and his sword, as his passports, whereso-ever fortune should conduct him. He escaped happily into Scotland, where, as usual, the king was making some slow movements for the relief of the English. William lost no time to oppose him, and had passed with infinite difficulty through a desert of his own making to the frontiers of Scotland. Here he found the enemy strongly intrenched. The causes of the war being in a good measure spent by William's late successors, and neither of the princes choosing to risk a battle in a country where the consequences of a defeat must be so dreadful, they agreed to an accommodation, which included a pardon for Edgar Atheling on a renunciation of his title to the crown.

William on this occasion showed, as he did on all occasions, an honourable and disinterested sense of merit by receiving Hereward to his friendship, and distinguishing him by particular favours and bounties. Malcolm, by his whole conduct, never seemed intent upon coming to extremities with William; he was satisfied with keeping this great warrior in some awe, without bringing things to a decision, that might involve his kingdom in the same calamitous fate that had oppressed England; whilst his wisdom enabled him to reap advantages from the fortunes of the conquered, in drawing so many useful people into his dominions; and from the policy of the Conqueror, in imitating those feudal regulations, which he saw his neighbour force upon the English, and which appeared so well calculated for the defence of the kingdom. He compassed this the more easily, because the feudal policy, being the discipline of all the considerable states in Europe, appeared the masterpiece of government.

If men, who have engaged in vast designs, could ever promise themselves repose, William, after so many victories, and so many political regulations to secure the fruit of them,

might now flatter himself with some hope of quiet; but disturbances were preparing for his old age from a new quarter, from whence they were less expected and less tolerable,—from the Normans, his companions in victory, and from his family, which he found not less difficulty in governing than his kingdom. Nothing but his absence A. D. 1082. from England was wanting to make the flame blaze out. The numberless pretensions which the petty lords, his neighbours on the continent, had on each other and on William, together with their restless disposition, and the intrigues of the French court, kept alive a constant dissension, which made the king's presence on the continent frequently necessary. The duke of Anjou had at this time actually invaded his dominions. He was obliged to pass over into Normandy with an army of 50,000 men. William, who had conquered England by the assistance of the princes on the continent, now turned against them the arms of the English, who served him with bravery and fidelity; and by their means he soon silenced all opposition, and concluded the terms of an advantageous peace. In the mean time his Norman subjects in England, inconstant, warlike, independent, fierce by nature, fiercer by their conquest, could scarcely brook that subordination, in which their safety consisted. Upon some frivolous pretences, chiefly personal[1] disgusts, a most dangerous conspiracy was formed; the principal men among the Normans were engaged in it; and foreign correspondence was not wanting. Though this conspiracy was chiefly formed and carried on by the Normans, they knew so well the use which William, on this occasion, would not fail to make of his English subjects, that they endeavoured, as far as was consistent with secrecy, to engage several of that nation; and above all, the Earl Waltheof, as the first in rank and reputation among his countrymen. Waltheof, thinking it base to engage in any cause but that of his country against his benefactor, unveils the whole design to Lanfranc, who immediately took measures for securing the chief conspirators. He despatched messengers to inform the king of his danger, who returned without delay at the head of his forces; and by his presence and his usual bold activity dispersed at once the vapours of this conspiracy. The heads

[1] Upon occasion of a ward refused in marriage. *Wright* thinks the feudal right of marriage not then introduced.

were punished. The rest, left under the shade of a dubious mercy, were awed into obedience. His glory was however sullied by his putting to death Waltheof, who had discovered the conspiracy; but he thought the desire the rebels had shown of engaging him in their designs demonstrated sufficiently that Waltheof still retained a dangerous power. For as the years, so the suspicions, of this politic prince increased; at whose time of life generosity begins to appear no more than a splendid weakness. These troubles were hardly appeased when others began to break forth in his own family, which neither his glory, nor the terror which held a great nation in chains, could preserve in obedience to him. To remove in some measure the jealousy of the court of France with regard to his invasion of England, he had promised upon his acquisition of that kingdom to invest his eldest son Robert with the duchy of Normandy. But, as his new acquisition did not seem so secure as it was great and magnificent, he was far from any thoughts of resigning his hereditary dominions, which he justly considered as a great instrument in maintaining his conquests, and a necessary retreat if he should be deprived of them by the fortune of war. So long as the state of his affairs in England appeared unsettled, Robert acquiesced in the reasonableness of this conduct; but when he saw his father established on his throne and found himself growing old in an inglorious subjection, he began first to murmur at the injustice of the king, soon after to cabal with the Norman barons and at the court of France, and at last openly rose in rebellion, and compelled the vassals of the duchy to do him homage. The king was not inclined to give up to force what he had refused to reason. Unbroken with age, unwearied with so many expeditions, he passed again into Normandy, and pressed his son with the vigour of a young warrior.

A. D. 1083.

This war, which was carried on without anything decisive for some time, ended by a very extraordinary and affecting incident. In one of those skirmishes, which were frequent according to the irregular mode of warfare in those days, William and his son Robert, alike in a forward and adventurous courage, plunged into the thickest of the fight, and, unknowingly, encountered each other. But Robert, superior by fortune, or by the vigour of his youth, wounded

and unhorsed the old monarch; and was just on the point of pursuing his unhappy advantage to the fatal extremity, when the well-known voice of his father at once struck his ears, and suspended his arm. Blushing for his victory, and overwhelmed with the united emotions of grief, shame, and returning piety, he fell on his knees, poured out a flood of tears, and, embracing his father, besought him for pardon. The tide of nature returning strongly on both, the father in his turn embraced his son, and bathed him with his tears; whilst the combatants on either side, astonished at so unusual a spectacle, suspended the fight, applauded this striking act of filial piety and paternal tenderness, and pressed that it might become the prelude to a lasting peace. Peace was made; but entirely to the advantage of the father, who carried his son into England, to secure Normandy from the dangers to which his ambition and popularity might expose that dukedom.

That William might have peace upon no part, the Welsh and Scots took advantage of these troubles in his family to break into England; but their expeditions were rather incursions than invasions; they wasted the country, and then retired to secure their plunder. But William, always troubled, always in action, and always victorious, pursued them, and compelled them to a peace; which was not concluded but by compelling the king of Scotland, and all the princes of Wales, to do him homage. How far this homage extended with regard to Scotland, I find it difficult to determine.

Robert, who had no pleasure but in action, as soon as this war was concluded, finding that he could not regain his father's confidence, and that he had no credit at the court of England, retired to that of France. Edgar Atheling saw likewise, that the innocence of his conduct could not make amends for the guilt of an undoubted title to the Crown; and that the Conqueror, soured by continual opposition, and suspicious through age and the experience of mankind, regarded him with an evil eye. He therefore desired leave to accompany Robert out of the kingdom, and then to make a voyage to the Holy Land: this leave was readily granted. Edgar having displayed great valour in useless acts of chivalry abroad, after the Conqueror's death returned to England, where he long lived in great tranquillity, happy in himself,

beloved by all the people, and unfeared by those who held his sceptre, from his mild and inactive virtue.

A. D. 1084. William had been so much a stranger to repose, that it became no longer an object desirable to him. He revived his claim to the Vexin François, and some other territories on the confines of Normandy. This quarrel, which began between him and the king of France on political motives, was increased into rancour and bitterness, first, by a boyish contest at chess between their children, which was resented, more than became wise men, by the fathers; it was further exasperated by taunts and mockeries yet less becoming their age and dignity, but which infused a

A. D. 1087. mortal venom into the war. William entered first into the French territories, wantonly wasting the country, and setting fire to the towns and villages. He entered Mantes, and as usual set it on fire; but, whilst he urged his horse over the smoking ruins, and pressed forward to further havoc, the beast, impatient of the hot embers, which burned his hoofs, plunged and threw his rider violently on the saddle-bow. The rim of his belly was wounded; and this wound, as William was corpulent, and in the decline of life, proved fatal. A rupture ensued, and he died at Rouen, after showing a desire of making amends for his cruelty by restitutions to the towns he had destroyed, by alms, and endowments, the usual fruits of a late penitence, and the acknowledgments which expiring ambition pays to virtue.

There is nothing more memorable in history than the actions, fortunes, and character of this great man; whether we consider the grandeur of the plans he formed, the courage and wisdom with which they were executed, or the splendour of that success, which, adorning his youth, continued without the smallest reverse to support his age, even to the last moments of his life. He lived about seventy years, and reigned within ten years as long as he lived; sixty over his dukedom, above twenty over England; both of which he acquired or kept by his own magnanimity, with hardly any other title than he derived from his arms; so that he might be reputed, in all respects, as happy as the highest ambition, the most fully gratified, can make a man. The silent inward satisfactions of domestic happiness he neither had nor sought. He had a body suited to the character of his mind, erect, firm,

large, and active; whilst to be active was a praise; a countenance stern, and which became command. Magnificent in his living, reserved in his conversation, grave in his common deportment, but relaxing with a wise facetiousness, he knew how to relieve his mind and preserve his dignity; for he never forfeited by a personal acquaintance that esteem he had acquired by his great actions. Unlearned in books, he formed his understanding by the rigid discipline of a large and complicated experience. He knew men much, and therefore generally trusted them but little; but when he knew any man to be good, he reposed in him an entire confidence, which prevented his prudence from degenerating into a vice. He had vices in his composition, and great ones; but they were the vices of a great mind: ambition, the malady of every extensive genius; and avarice, the madness of the wise: one chiefly actuated his youth; the other governed his age. The vices of young and light minds, the joys of wine, and the pleasures of love, never reached his aspiring nature. The general run of men he looked on with contempt, and treated with cruelty when they opposed him. Nor was the rigour of his mind to be softened but with the appearance of extraordinary fortitude in his enemies, which, by a sympathy congenial to his own virtues, always excited his admiration and insured his mercy. So that there were often seen in this one man, at the same time, the extremes of a savage cruelty, and a generosity that does honour to human nature. Religion too seemed to have a great influence on his mind from policy, or from better motives; but his religion was displayed in the regularity with which he performed its duties, not in the submission he showed to its ministers, which was never more than what good government required. Yet his choice of a counsellor and favourite was, not according to the mode of the time, out of that order, and a choice that does honour to his memory. This was Lanfranc, a man of great learning for the times, and extraordinary piety. He owed his elevation to William; but, though always inviolably faithful, he never was the tool or flatterer of the power which raised him; and the greater freedom he showed, the higher he rose in the confidence of his master. By mixing with the concerns of state he did not lose his religion and conscience, or make them the covers or instruments of ambition; but tem-

pering the fierce policy of a new power by the mild lights of religion, he became a blessing to the country in which he was promoted. The English owed to the virtue of this stranger, and the influence he had on the king, the little remains of liberty they continued to enjoy; and at last such a degree of his confidence, as in some sort counterbalanced the severities of the former part of his reign.

CHAPTER III.

REIGN OF WILLIAM THE SECOND, SURNAMED RUFUS.

A. D. 1087. WILLIAM had by his Queen Matilda three sons, who survived him, Robert, William, and Henry. Robert, though in an advanced age at his father's death, was even then more remarkable for those virtues which make us entertain hopes of a young man, than for that steady prudence, which is necessary when the short career we are to run will not allow us to make many mistakes. He had indeed a temper suitable to the genius of the time he lived in, and which therefore enabled him to make a considerable figure in the transactions which distinguished that period. He was of a sincere, open, candid nature; passionately fond of glory; ambitious without having any determinate object in view; vehement in his pursuits, but inconstant; much in war, which he understood and loved. But guiding himself both in war and peace solely by the impulses of an unbounded and irregular spirit, he filled the world with an equal admiration and pity of his splendid qualities and great misfortunes.

William was of a character very different. His views were short, his designs few, his genius narrow, and his manners brutal; full of craft, rapacious, without faith, without religion; but circumspect, steady, and courageous for his ends, not for glory. These qualities secured to him that fortune which the virtues of Robert deserved. Of Henry we shall speak hereafter. We have seen the quarrels, together with the causes of them, which embroiled the Conqueror with his eldest son Robert. Although the wound was skinned over by several temporary and palliative accommodations, it still

left a soreness in the father's mind, which influenced him, by his last will, to cut off Robert from the inheritance of his English dominions. Those, he declared, he derived from his sword, and therefore he would dispose of them to that son, whose dutiful behaviour had made him the most worthy. To William, therefore, he left his crown; to Henry he devised his treasures: Robert possessed nothing but the duchy, which was his birthright. William had some advantages to enforce the execution of a bequest, which was not included even in any of the modes of succession which then were admitted. He was at the time of his father's death in England, and he had an opportunity of seizing the vacant government, a thing of great moment in all disputed rights. He had also, by his presence, an opportunity of engaging some of the most considerable leading men in his interests; but his greatest strength was derived from the adherence to his cause of Lanfranc, a prelate of the greatest authority amongst the English as well as the Normans, both from the place he had held in the Conqueror's esteem, whose memory all men respected, and from his own great and excellent qualities. By the advice of this prelate the new monarch professed to be entirely governed. And as an earnest of his future reign he renounced all the rigid maxims of conquest, and swore to protect the church and the people, and to govern by St. Edward's laws, a promise extremely grateful and popular to all parties: for the Normans, finding the English passionately desirous of these laws, and only knowing that they were in general favourable to liberty, and conducive to peace and order, became equally clamorous for their re-establishment. A. D. 1088.

By these measures, and the weakness of those which were adopted by Robert, William established himself on his throne, and suppressed a dangerous conspiracy, formed by some Norman noblemen in the interests of his brother, although it was fomented by all the art and intrigue which his uncle Odo could put in practice, the most bold and politic man of that age.

The security he began to enjoy from this success, and the strength which government receives by merely continuing, gave room to his natural dispositions to break out in several acts of tyranny and injustice. The forest laws were

executed with rigour, the old impositions revived, and new laid on. Lanfranc made representations to the king on this conduct, but they produced no other effect than the abatement of his credit, which from that moment to his death, which happened soon after, was very little in the government. The revenue of the vacant see was seized into the king's hands.

A. D. 1089. When the church-lands were made subject to military service, they seemed to partake all the qualities of the military tenure, and to be subject to the same burthens; and as on the death of a military vassal his land was in wardship of the lord until the heir had attained his age, so there arose a pretence, on the vacancy of a bishoprick, to suppose the land in ward with the king, until the seat should be filled. This principle, once established, opened a large field for various lucrative abuses; nor could it be supposed, whilst the vacancy turned to such good account, that a necessitous or avaricious king would show any extraordinary haste to put the bishopricks and abbacies out of his power. In effect, William always kept them a long time vacant, and in the vacancy granted away much of their possessions, particularly several manors belonging to the see of Canterbury; and when he filled this see, it was only to prostitute that dignity by disposing of it to the highest bidder.

To support him in these courses he chose for his minister Ralf Flambard, a fit instrument in his designs, and possessed of such art and eloquence as to colour them in a specious manner. This man inflamed all the king's passions, and encouraged him in his unjust enterprises. It is hard to say which was most unpopular, the king or his minister. But Flambard, having escaped a conspiracy against his life, and having punished the conspirators severely, struck such a general terror into the nation, that none dared to oppose him. Robert's title alone stood in the king's way, and he knew that this must be a perpetual source of disturbance to him. He resolved therefore to put him in peril for his own dominions. He collected a large army, and, entering into Normandy, he began a war, at first with great success on account of a difference between the duke and his brother

A. D. 1093. Henry; but their common dread of William reconciled them, and this reconciliation put them in a condition of procuring an equal peace; the chief condi-

tions of which were, that Robert should be put in possession of certain seigniories in England, and that each, in case of survival, should succeed to the other's dominions. William concluded this peace the more readily, because Malcolm, king of Scotland, who hung over him, was ready upon every advantage to invade his territories, and had now actually entered England with a powerful army. Robert, who courted action, without regarding what interest might have dictated, immediately on concluding the treaty entered into his brother's service in this war against the Scots; which, on the king's return, being in appearance laid asleep by an accommodation, broke out with redoubled fury the following year. The king of Scotland, provoked to this rupture by the haughtiness of William, was circumvented by the artifice and fraud of one of his ministers; under an appearance of negotiation he was attacked and killed, together with his only son. This was a grievous wound to Scotland in the loss of one of the wisest and bravest of her kings; and in the domestic distractions which afterwards tore that kingdom to pieces.

No sooner was this war ended, than William, freed from an enemy which had given himself and his father so many alarms, renewed his ill treatment of his brother, and refused to abide by the terms of the late treaty. Robert, incensed at these repeated perfidies, returned to Normandy with thoughts full of revenge and war. But he found that the artifices and bribes of the king of England had corrupted the greatest part of his barons, and filled the country with faction and disloyalty. His own facility of temper had relaxed all the bands of government, and contributed greatly to these disorders. In this distress he was obliged to have recourse to the king of France for succour. Philip, who was then on the throne, entered into his quarrel. Nor was William on his side backward; though prodigal to the highest degree, the resources of his tyranny and extortion were inexhaustible. He was enabled to enter Normandy, once more, with a considerable army. But the opposition, too, was considerable; and the war had probably been spun out to a great length, and had drawn on very bloody consequences, if one of the most extraordinary events which are contained in the history of mankind, had not suspended their arms, and drawn all infe-

A. D. 1094.

A. D. 1096.

rior views, sentiments, and designs, into the vortex of one grand project. This was the crusade, which, with astonishing success, now began to be preached through all Europe. This design was then, and it continued long after, the principle which influenced the transactions of that period both at home and abroad; it will therefore not be foreign to our subject to trace it to its source.

As the power of the papacy spread, the see of Rome began to be more and more an object of ambition: the most refined intrigues were put in practice to attain it; and all the princes of Europe interested themselves in the contest. The election of pope was not regulated by those prudent dispositions which have since taken place; there were frequent pretences to controvert the validity of the election, and of course several persons at the same time laid claim to that dignity. Popes and anti-popes arose. Europe was rent asunder by these disputes, whilst some princes maintained the rights of one party, and some defended the pretensions of the other; sometimes the prince acknowledged one pope, whilst his subjects adhered to his rival. The scandals occasioned by these schisms were infinite; and they threatened a deadly wound to that authority whose greatness had occasioned them. Princes were taught to know their own power. That pope, who this day was a suppliant to a monarch to be recognised by him, could with an ill grace pretend to govern him with a high hand the next. The lustre of the holy see began to be tarnished; when Urban the Second, after a long contest of this nature, was universally acknowledged. That pope, sensible by his own experience of the ill consequence of such disputes, sought to turn the minds of the people into another channel; and, by exerting it vigorously, to give a new strength to the papal power. In an age so ignorant, it was very natural that men should think a great deal in religion depended upon the very scene where the work of our redemption was accomplished. Pilgrimages to Jerusalem were therefore judged highly meritorious, and became very frequent. But the country which was the object of them, as well as several of those through which the journey lay, were in the hands of Mahometans; who, against all the rules of humanity and good policy, treated the Christian pilgrims with great indignity. These, on their return, filled the minds

of their neighbours with hatred and resentment against those infidels. Pope Urban laid hold on this disposition, and encouraged Peter the Hermit, a man visionary, zealous, enthusiastic, and possessed of a warm irregular eloquence adapted to the pitch of his hearers, to preach an expedition for the delivery of the Holy Land.

Great designs may be started, and the spirit of them inspired, by enthusiasts, but cool heads are required to bring them into form. The pope, not relying solely on Peter, called a council at Clermont, where an infinite number of people of all sorts were assembled; here he dispensed, with a full hand, benedictions and indulgences to all persons who should engage in the expedition; and preaching with great vehemence in a large plain, towards the end of his discourse somebody by design, or by accident, cried out, "It is the will of God!" this voice was repeated by the next, and in a moment it circulated through this innumerable people, which rung with the acclamation of "It is the will of God! It is the will of God!" The neighbouring villages caught up those oracular words, and it is incredible with what celerity they spread everywhere around into places the most distant. This circumstance, then considered as miraculous, contributed greatly to the success of the hermit's mission. No less did the disposition of the nobility throughout Europe, wholly actuated with devotion and chivalry, contribute to forward an enterprise so suited to the gratification of both these passions. Everything was now in motion; both sexes, and every station, and age, and condition of life, engaged with transport in this holy warfare. There was even a danger that Europe would be entirely exhausted by the torrents that were rushing out to deluge Asia. These vast bodies, collected without choice, were conducted without skill or order; and they succeeded accordingly. Women and children composed no small part of those armies, which were headed by priests; and it is hard to say which is most lamentable, the destruction of such multitudes of men, or the phrensy which drew it upon them. But this design, after innumerable calamities, began at last to be conducted in a manner worthy of so grand and bold a project. Raimond, Count of Tholouse, Godfrey of Boulogne, and several other princes, who were great captains as well as

Maimbourg.

Chron. Sax. 204.

devotees, engaged in the expedition, and with suitable effects. But none burned more to signalize his zeal and courage on this occasion than Robert, Duke of Normandy, who was fired with the thoughts of an enterprise, which seemed to be made for his genius. He immediately suspended his interesting quarrel with his brother, and, instead of contesting with him the crown, to which he had such fair pretensions, or the duchy, of which he was in possession, he proposed to mortgage to him the latter during five years for a sum of 13,000 marks of gold. William, who had neither sense of religion nor thirst of glory, intrenched in his secure and narrow policy, laughed at a design that had deceived all the great minds in Europe. He extorted, as usual, this sum from his subjects; and immediately took possession of Normandy; whilst Robert, at the head of a gallant army, leaving his hereditary dominions, is gone to cut out unknown kingdoms in Asia.

Some conspiracies disturbed the course of the reign, or rather tyranny, of this prince; as plots usually do, they ended in the ruin of those who contrived them, but proved no check to the ill government of William. Some disturbances too he had from the incursions of the Welsh, from revolts in Normandy, and from a war, that began and ended without anything memorable either in the cause or consequence, with France.

He had a dispute at home, which at another time had raised great disturbances; but nothing was now considered but the expedition to the Holy Land. After the death of Lanfranc, William omitted for a long time to fill up that see, and had even alienated a considerable portion of the revenue. A fit of sickness, however, softened his mind; and the clergy, taking advantage of those happy moments, among other parts of misgovernment which they advised him to correct, particularly urged him to fill the vacant sees. He filled that of Canterbury with Anselm, bishop of Beck, a man of great piety and learning, but inflexible and rigid in whatever related to the rights, real or supposed, of the church. This prelate refused to accept the see of Canterbury, foreseeing the troubles that must arise from his own dispositions and those of the king; nor was he prevailed upon to accept it but on a promise of indemnification for what the temporal-

ties of the see had suffered. But William's sickness and pious resolutions ending together, little care was taken about the execution of this agreement. Thus began a quarrel between this rapacious king and inflexible archbishop. Soon after Anselm declared in favour of Pope Urban, before the king had recognised him, and thus subjected himself to the law which William the Conqueror had made against accepting a pope without his consent. The quarrel was inflamed to the highest pitch; and Anselm desiring to depart the kingdom, the king consented.

The eyes of all men being now turned towards the great transactions in the East, William, Duke of Guienne, fired by the success and glory that attended the holy adventurers, resolved to take the cross; but his revenues were not sufficient to support the figure his rank required in this expedition. He applied to the king of England; who being master of the purses of his subjects, never wanted money; and he was politician enough to avail himself of the prodigal inconsiderate zeal of the times to lay out this money to great advantage. He acted the part of usurer to the Croises; and as he had taken Normandy in mortgage from his brother Robert, having advanced the Duke of Guienne a sum on the same conditions, he was ready to confirm his bargain by taking possession, when he was killed in hunting by an accidental stroke of an arrow, which pierced his heart. This accident happened in the New Forest, which his father with such infinite oppression of the people had made, and in which they both delighted extremely. In the same forest the Conqueror's eldest son, a youth of great hopes, had, several years before, met his death from the horns of a stag; and these so memorable fates to the same family, and in the same place, easily inclined men to think this a judgment from Heaven; the people consoling themselves under their sufferings with these equivocal marks of the vengeance of Providence upon their oppressors. A. D. 1100.

We have painted this prince in the colours, in which he is drawn by all the writers who lived the nearest to his time. Although the monkish historians, affected with the partiality of their character, and with the sense of recent injuries, expressed themselves with passion concerning him, we have no other guides to follow. Nothing, indeed, in his life appears

to vindicate his character; and it makes strongly for his disadvantage, that without any great end of government he contradicted the prejudices of the age in which he lived, the general and common foundation of honour; and thereby made himself obnoxious to that body of men, who had the sole custody of fame, and could alone transmit his name with glory or disgrace to posterity.

CHAPTER IV.

REIGN OF HENRY I.

A. D. 1100. HENRY, the youngest son of the Conqueror, was hunting at the same time, and in the same forest, in which his brother met his fate. He was not long before he came to a resolution of seizing on the vacant crown. The order of succession had already been broken; the absence of Duke Robert, and the concurrence of many circumstances altogether resembling those which had been so favourable to the late monarch, incited him to a similar attempt. To lose no time at a juncture when the use of a moment is often decisive, he went directly to Winchester, where the regalia and the treasures of the crown were deposited. But the governor, a man of resolution, and firmly attached to Robert, positively refused to deliver them. Henry, conscious that great enterprises are not to be conducted in a middle course, prepared to reduce him by force of arms. During this contest, the news of the king's death, and the attempts of Henry, drew great numbers of the nobility to Winchester, and with them a vast concourse of the inferior people. To the nobility he set forth his title to the crown in the most plausible manner it could bear; he alleged, that he was born after his father had acquired his kingdom, and that he was therefore natural heir of the crown; but that his brother was, at best, only born to the inheritance of a dukedom. The nobility heard the claim of this prince; but they were more generally inclined to Robert, whose birthright, less questionable in itself, had been also confirmed by a solemn treaty. But whilst they retired to consult, Henry, well apprized of their dispositions, and who therefore

was little inclined to wait the result of their debates, threw himself entirely upon the populace. To them he said little concerning his title, as he knew such an audience is little moved with a discussion of rights, but much with the spirit and manner in which they are claimed; for which reason he began by drawing his sword, and swearing, with a bold and determined air, to persist in his pretensions to his last breath. Then turning to the crowd, and remitting of his severity, he began to soothe them with the promises of a milder government than they had experienced, either beneath his brother or his father: the church should enjoy her immunities, the people their liberties, the nobles their pleasures, the forest laws should cease; the distinction of Englishman and Norman be heard no more. Next, he expatiated on the grievances of the former reigns, and promised to redress them all. Lastly, he spoke of his brother Robert, whose dissoluteness, whose inactivity, whose unsteady temper, nay, whose very virtues, threatened nothing but ruin to any country which he should govern. The people received this popular harangue, delivered by a prince whose person was full of grace and majesty, with shouts of joy and rapture. Immediately they rush to the house where the council is held, which they surround, and with clamour and menaces demand Henry for their king. The nobility were terrified by the sedition; and remembering how little present Robert had been on a former occasion to his own interests, or to those who defended him, they joined their voice to that of the people, and Henry was proclaimed without opposition. The treasure, which he seized, he divided amongst those that seemed wavering in his cause; and that he might secure his new and disputed right by every method, he proceeded without delay to London to be crowned, and to sanctify by the solemnity of the unction the choice of the people. As the churchmen in those days were the arbiters of everything, and as no churchman possessed more credit than Anselm, archbishop of Canterbury, who had been persecuted and banished by his brother, he recalled that prelate, and by every mark of confidence confirmed him in his interests. Two other steps he took, equally prudent and politic; he confirmed and enlarged the privileges of the city of London; and gave to the whole kingdom a charter of liberties, which was the first of the kind, and A. D. 1101.

laid the foundation of those successive charters, which at last completed the freedom of the subject. In fine, he cemented the whole fabric of his power by marrying Maude, daughter of Malcolm, king of Scotland, by the sister of Edgar Atheling; thus to insure the affection of the English, and, as he flattered himself, to have a sure succession to his children.

The crusade being successfully finished by the taking of Jerusalem, Robert returned into Europe. He had acquired great reputation in that war, in which he had no interest; his real and valuable rights he prosecuted with languor. Yet such was the respect paid to his title, and such the attraction of his personal accomplishments, that when he had at last taken possession of his Norman territories, and entered England with an army to assert his birthright, he found most of the Norman barons, and many of the English, in readiness to join him. But the diligence of Anselm, who employed all his credit to keep the people firm to the oath they had taken, prevented him from profiting of the general inclination in his favour. His friends began to fall off by degrees, so that he was induced, as well by the situation of his affairs as the flexibility of his temper, to submit to a treaty on the plan of that he had formerly entered into with his brother Rufus.

This treaty being made, Robert returned to his dukedom, and gave himself over to his natural indolence and dissipation. Uncured by his misfortunes of a loose generosity, that flowed indiscriminately on all, he mortgaged every branch of his revenue, and almost his whole domain. His barons, despising his indigence, and secure in the benignity of his temper, began to assume the unhappy privilege of sovereigns. They made war on each other at pleasure, and pursuing their hostilities with the most scandalous licence, they reduced that fine country to a deplorable condition. In vain did the people, ruined by the tyranny and divisions of the great, apply to Robert for protection; neither from his circumstances nor his character was he able to afford them any effectual relief: whilst Henry, who by his bribes and artifices kept alive the disorder, of which he complained and profited, formed a party in Normandy to call him over, and to put the dukedom under his protection. Accordingly he prepared a considerable force for the expedition, and taxed his own subjects arbitrarily, and without mercy,

A. D. 1103.

for the relief he pretended to afford those of his brother. His preparations roused Robert from his indolence, and united likewise the greater part of his barons to his cause, unwilling to change a master whose only fault was his indulgence of them, for the severe vigilance of Henry. The king of France espoused the same side; and even in England some emotions were excited in favour of the duke, by indignation for the wrongs he had suffered and those he was going to suffer. Henry was alarmed, but did not renounce his design. He was to the last degree jealous of his prerogative; but knowing what immense resources kings may have in popularity, he called on this occasion a great council of his barons and prelates; and there, by his arts and his eloquence, in both which he was powerful, he persuaded the assembly to a hearty declaration in his favour, and to a large supply. Thus secured at home, he lost no time to pass over to the continent, and to bring the Norman army to a speedy engagement; they fought under the walls of Tenchebray, where the bravery and military genius of Robert, never more conspicuous than on that day, were borne down by the superior fortune and numbers of his ambitious brother. He was made prisoner; and notwithstanding all the tender pleas of their common blood, in spite of his virtues, and even of his misfortunes, which pleaded so strongly for mercy, the rigid conqueror held him in various prisons until his death, which did not happen until after a rigorous confinement of eighteen, some say twenty-seven, years. This was the end of a prince born with a thousand excellent qualities, which served no other purpose than to confirm, from the example of his misfortunes, that a facility of disposition, and a weak beneficence, are the greatest vices that can enter into the composition of a monarch, equally ruinous to himself and to his subjects. A. D. 1106.

The success of this battle put Henry in possession of Normandy, which he held ever after with very little disturbance. He fortified his new acquisition by demolishing the castles of those turbulent barons, who had wasted, and afterwards enslaved, their country by their dissensions. Order and justice took place, until everything was reduced to obedience; then a severe and regular oppres- A. D. 1107.

A. D. 1103. sion succeeded the former disorderly tyranny. In England things took the same course. The king no longer doubted his fortune, and therefore no longer respected his promises or his charter. The forests, the savage passion of the Norman princes, for which both the prince and people paid so dearly, were maintained, increased, and guarded with laws more rigorous than before. Taxes were largely and arbitrarily assessed. But all this tyranny did not weaken, though it vexed, the nation, because the great men were kept in proper subjection, and justice was steadily administered.

The politics of this remarkable reign consisted of three branches:—to redress the gross abuses which prevailed in the civil government and the revenue; to humble the great barons, and keep the aspiring spirit of the clergy within proper bounds. The introduction of a new law with a new people, at the conquest, had unsettled everything; for whilst some adhered to the Conqueror's regulations, and others contended for those of St. Edward, neither of them were well executed or properly obeyed. The king, therefore, with the assistance of his justiciaries, compiled a new body of laws, in order to find a temper between both. The coin had been miserably debased, but it was restored by the king's vigilance, and preserved by punishments, cruel, but terrifying in their example. There was a savageness in all the judicial proceedings of those days, that gave even justice itself the complexion of tyranny; for whilst a number of men were seen in all parts of the kingdom, some castrated, some without hands, others with their feet cut off, and in various ways cruelly mangled, the view of a perpetual punishment blotted out the memory of the transient crime, and government was the more odious, which out of a cruel and mistaken mercy, to avoid punishing with death, devised torments far more terrible than death itself.

But nothing called for redress more than the disorders in the king's own household. It was considered as an incident annexed to their tenure, that the soccage vassals of the Crown, and so of all the subordinate barons, should receive their lord and all his followers, and supply them in their progresses and journeys, which custom continued for some

ages after in Ireland, under the name of Coshering. But this indefinite and ill-contrived charge on the tenant was easily perverted to an instrument of much oppression by the disorders of a rude and licentious court; insomuch that the tenants, in fear for their substance, for the honour of their women, and often for their lives, deserted their habitations and fled into the woods on the king's approach. No circumstance could be more dishonourable to a prince; but happily, like many other great abuses, it gave rise to a great reform, which went much further than its immediate purposes. This disorder, which the punishment of offenders could only palliate, was entirely taken away by commuting personal service for a rent in money; which regulation, passing from the king to all the inferior lords, in a short time wrought a great change in the state of the nation. To humble the great men, more arbitrary methods were used. The adherence to the title of Robert was a cause, or a pretence, of depriving many of their vast possessions, which were split or parcelled out amongst the king's creatures, with great injustice to particulars, but in the consequences with general and lasting benefit. The king held his courts according to the custom at Christmas and Easter, but he seldom kept both festivals in the same place. He made continual progresses into all parts of his kingdom, and brought the royal authority and person home to the doors of his haughty barons, which kept them in strict obedience during his long and severe reign.

His contests with the church, concerning the right of investiture, were more obstinate and more dangerous. As this is an affair that troubled all Europe as well as England, and holds deservedly a principal place in the story of those times, it will not be impertinent to trace it up to its original. In the early times of Christianity, when religion was only drawn from its obscurity to be persecuted; when a bishop was only a candidate for martyrdom; neither the preferment, nor the right of bestowing it, were sought with great ambition. Bishops were then elected, and often against their desire, by their clergy and the people; the subordinate ecclesiastical districts were provided for in the same manner. After the Roman empire became Christian, this usage, so generally established, still maintained its ground. However, in the principal cities, the emperor frequently exercised the privilege

of giving a sanction to the choice, and sometimes of appointing the bishop; though, for the most part, the popular election still prevailed. But when the barbarians, after destroying the empire, had at length submitted their necks to the gospel, their kings and great men, full of zeal and gratitude to their instructors, endowed the church with large territories and great privileges. In this case it was but natural, that they should be the patrons of those dignities, and nominate to that power, which arose from their own free bounty. Hence the bishopricks in the greatest part of Europe became in effect, whatever some few might have been in appearance, merely donative. And as the bishopricks formed so many seigniories, when the feudal establishment was completed, they partook of the feudal nature, so far as they were subjects capable of it; homage and fealty were required on the part of the spiritual vassal; the king on his part gave the bishop the investiture, or livery and seizin of his temporalities, by the delivery of a ring and staff. This was the original manner of granting feudal property, and something like it is still practised in our base-courts. Pope Adrian confirmed this privilege to Charlemagne by an express grant. The clergy of that time, ignorant, but inquisitive, were very ready at finding types and mysteries in every ceremony; they construed the staff into an emblem of the pastoral care, and the ring into a type of the bishop's allegorical marriage to his church, and therefore supposed them designed as emblems of a jurisdiction merely spiritual. The papal pretensions increased with the general ignorance and superstition; and the better to support these pretensions, it was necessary at once to exalt the clergy extremely, and, by breaking off all ties between them and their natural sovereigns, to attach them wholly to the Roman see. In pursuance of this project, the pope first strictly forbade the clergy to receive investitures from laymen, or to do them homage. A council held at Rome entirely condemned this practice; and the condemnation was the less unpopular, because the investiture gave rise to frequent and flagrant abuses, especially in England, where the sees were on this pretence with much scandal long held in the king's hands; and afterwards as scandalously and publicly sold to the highest bidder. So it had been in the last reign, and so it continued in this.

Henry, though vigorously attacked, with great resolution maintained the rights of his crown with regard to investitures, whilst he saw the emperor, who claimed a right of investing the pope himself, subdued by the thunder of the Vatican. His chief opposition was within his own kingdom. Anselm, archbishop of Canterbury, a man of unblamable life and of learning for his time, but blindly attached to the rights of the church, real or supposed, refused to consecrate those who received investitures from the king. The parties appealed to Rome; Rome, unwilling either to recede from her pretensions, or to provoke a powerful monarch, gives a dubious answer. Meanwhile the contest grows hotter; Anselm is obliged to quit the kingdom, but is still inflexible. At last the king, who from the delicate situation of his affairs in the beginning of his reign had been obliged to temporize for a long time, by his usual prudent mixture of management with force obliged the pope to a temperament, which seemed extremely judicious. The king received homage and fealty from his vassal; the investiture, as it was generally understood to relate to spiritual jurisdiction, was given up, and on this equal bottom peace was established. The secret of the pope's moderation was this: he was at that juncture close pressed by the emperor, and it might be highly dangerous to contend with two such enemies at once; and he was much more ready to yield to Henry, who had no reciprocal demands on him, than to the emperor, who had many and just ones, and to whom he could not yield any one point without giving up an infinite number of others very material and interesting.

As the king extricated himself happily from so great an affair, so all the other difficulties of his reign only exercised, without endangering, him. The efforts of France in favour of the son of Robert were late, desultory, and therefore unsuccessful. That youth, endued with equal virtue and more prudence than his father, after exerting many useless acts of unfortunate bravery, fell in battle, and freed Henry from all disturbance on the side of France. The incursions of the Welsh in this reign only gave him an opportunity of confining that people within narrower bounds. At home he was well obeyed by his subjects, abroad he dignified his family by splendid alliances. His daughter Matilda he married to

the emperor; but his private fortunes did not flow with so even a course as his public affairs. His only son
A. D. 1120. William, with a natural daughter, and many of the flower of the young nobility, perished at sea between Normandy and England. From that fatal accident the king was never seen to smile. He sought in vain from a second marriage to provide a male successor; but when he saw all prospect of this at an end, he called a great
A. D. 1127. council of his barons and prelates. His daughter Matilda, after the decease of the emperor, he had given in marriage to Geoffrey Plantagenet, Count of Anjou. As she was his only remaining issue, he caused her to be acknowledged as his successor by the great council; he enforced this acknowledgment by solemn oaths of fealty; a sanction, which he weakened, rather than confirmed, by frequent repetition; vainly imagining, that on his death any ties would bind to the respect of a succession, so little respected by himself, and by the violation of which he had procured his crown. Having taken these measures in favour of his daughter, he died in Normandy, but in a good old age, and in the thirty-sixth year of a prosperous reign.

CHAPTER V.

REIGN OF STEPHEN.

A. D. 1135. ALTHOUGH the authority of the Crown had been exercised with very little restraint during the three preceding reigns, the succession to it, or even the principles of the succession, were but ill ascertained; so that a doubt might justly have arisen, whether the Crown was not in a great measure elective. This uncertainty exposed the nation, at the death of every king, to all the calamities of a civil war; but it was a circumstance favourable to the designs of Stephen, Earl of Bulloigne, who was son of Stephen, Earl of Blois, by a daughter of the Conqueror. The late king had raised him to great employments, and enriched him by the grant of several lordships. His brother had been made bishop of Winchester; and by adding to it the place of his chief justiciary, the king gave him an opportunity of becom-

ing one of the richest subjects in Europe, and of extending an unlimited influence over the clergy and the people. Henry trusted, by the promotion of two persons so near him in blood, and so bound by benefits, that he had formed an impenetrable fence about the succession; but he only inspired into Stephen the design of seizing on the Crown by bringing him so near it. The opportunity was favourable. The king died abroad. Matilda was absent with her husband; and the bishop of Winchester, by his universal credit, disposed the churchmen to elect his brother with the concurrence of the greatest part of the nobility; who forgot their oaths, and vainly hoped that a bad title would necessarily produce a good government. Stephen, in the flower of youth, bold, active, courageous, full of generosity and a noble affability, that seemed to reproach the state and avarice of the preceding kings, was not wanting to his fortune. He seized immediately the immense treasures of Henry, and by distributing them with a judicious profusion, removed all doubts concerning his title to them. He did not spare even the royal demesne; but secured himself a vast number of adherents by involving their guilt and interest in his own. He raised a considerable army of Flemings, in order to strengthen himself against another turn of the same instability which had raised him to the throne; and, in imitation of the measures of the late king, he concluded all by giving a charter of liberties as ample as the people at that time aspired to. This charter contained a renunciation of the forests made by his predecessor; a grant to the ecclesiastics of a jurisdiction over their own vassals; and to the people in general an immunity from unjust talliages and exactions. It is remarkable, that the oath of allegiance taken by the nobility on this occasion was conditional; it was to be observed so long as the king observed the terms of his charter; a condition, which added no real security to the rights of the subject, but which proved a fruitful source of dissension, tumult, and civil violence.

The measures which the king hitherto pursued were dictated by sound policy; but he took another step to secure his throne, which in fact took away all its security, and at the same time brought the country to extreme misery, and to the brink of utter ruin.

At the conquest there were very few fortifications in the kingdom; William found it necessary for his security to erect several; during the struggles of the English, the Norman nobility were permitted (as in reason it could not be refused) to fortify their own houses. It was however still understood, that no new fortress could be erected without the king's special licence. These private castles began very early to embarrass the government; the royal castles were scarcely less troublesome; for as everything was then in tenure, the governor held his place by the tenure of Castle-guard; and thus instead of a simple officer, subject to his pleasure, the king had to deal with a feudal tenant, secure against him by law, if he performed his services, and by force, if he was unwilling to perform them. Every resolution of government required a sort of civil war to put it in execution. The two last kings had taken and demolished several of these castles; but, when they found the reduction of any of them difficult, their custom frequently was to erect another close by it, tower against tower, ditch against ditch; these were called Malvoisins, from their purpose and situation. Thus instead of removing, they in fact doubled the mischief. Stephen perceiving the passion of the barons for these castles, among other popular acts in the beginning of his reign, gave a general licence for erecting them. Then was seen to arise in every corner of the kingdom, in every petty seigniory, an inconceivable multitude of strong holds, the seats of violence and the receptacles of murderers, felons, debasers of the coin, and all manner of desperate and abandoned villains. Eleven hundred and fifteen of these castles were built in this single reign. The barons, having thus shut out the law, made continual inroads upon each other, and spread war, rapine, burning, and desolation throughout the whole kingdom. They infested the high roads, and put a stop to all trade by plundering the merchants and travellers. Those who dwelt in the open country, they forced into their castles, and after pillaging them of all their visible substance, these tyrants held them in dungeons, and tortured them with a thousand cruel inventions to extort a discovery of their hidden wealth. The lamentable representation given by history of those barbarous times justifies the pictures in the old romances of the castles of giants and magicians. A great part of Europe was in the

same deplorable condition. It was then that some gallant spirits, struck with a generous indignation at the tyranny of these miscreants, blessed solemnly by the bishop, and followed by the praises and vows of the people, sallied forth to vindicate the chastity of women, and to redress the wrongs of travellers and peaceable men. The adventurous humour inspired by the crusade heightened and extended this spirit; and thus the idea of knight-errantry was formed.

Stephen felt personally these inconveniences; but because the evil was too stubborn to be redressed at once, he resolved to proceed gradually, and to begin with the castles of the bishops; as they evidently held them, not only against the interests of the Crown, but against the canons of the church. From the nobles he expected no opposition to this design; they beheld with envy the pride of these ecclesiastical fortresses, whose battlements seemed to insult the poverty of the lay barons. This disposition, and a want of unanimity among the clergy themselves, enabled Stephen to succeed in his attempt against the bishop of Salisbury, one of the first whom he attacked, and whose castles, from their strength and situation, were of the greatest importance. But the affairs of this prince were so circumstanced, that he could pursue no counsel that was not dangerous; his breach with the clergy let in the party of his rival Matilda. This party was supported by Robert, Earl of Gloucester, natural son to the late king; a man powerful by his vast possessions, but more formidable through his popularity, and the courage and abilities by which he had acquired it. Several other circumstances weakened the cause of Stephen; the charter, and the other favourable acts, the scaffolding of his ambition, when he saw the structure raised, he threw down and contemned. In order to maintain his troops, as well as to attach men to his cause, where no principle bound them, vast and continual largesses became necessary; all his legal revenue had been dissipated; and he was therefore obliged to have recourse to such methods of raising money as were evidently illegal. These causes every day gave some accession of strength to the party against him; the friends of Matilda were encouraged to appear in arms; a civil war ensued, long and bloody, prosecuted as chance or a blind rage directed by mutual acts of cruelty and treachery by frequent surprisals and assaults of castles, and

by a number of battles and skirmishes fought to no determinate end; and in which nothing of the military art appeared,
A. D. 1139. but the destruction which it caused. Various on this occasion were the reverses of fortune; while Stephen, though embarrassed by the weakness of his title, by the scantiness of his finances, and all the disorders which arose
A. D. 1140. from both, supported his tottering throne with wonderful activity and courage: but being at length defeated and made prisoner under the walls of Lincoln, the clergy openly declare for Matilda. The city of London, though unwilling, follows the example of the clergy; the defection from Stephen was growing universal. But Matilda, puffed up with a greatness, which as yet had no solid foundation, and stood merely in personal favour, shook it in the minds of all men by assuming, together with the insolence of conquest, the haughty rigour of an established dominion. Her title appeared but too good in the resemblance she bore to the pride of the former kings. This made the first ill success in her
A. D. 1141. affairs fatal. Her great support, the Earl of Gloucester, was in his turn made prisoner; in exchange for his liberty that of Stephen was procured, who renewed the war with his usual vigour. As he apprehended an attempt from Scotland in favour of Matilda, descended from the blood royal of that nation; to balance this weight, he persuaded the king of France to declare in his favour, alarmed as he was by the progress of Henry, the son of Matilda, and Geoffrey, Count of Anjou. This prince, no more than sixteen years of age, after receiving knighthood from David, king of Scotland, began to display a courage and capacity destined to the greatest things. Of a complexion which strongly inclined to pleasure, he listened to nothing but ambition; at an age which is usually given up to passion, he submitted delicacy to politics; and even in his marriage only remembered the interests of a sovereign; for, without examining too scrupulously into her character, he married Eleanor, the heiress of Guienne, though divorced from her husband for her supposed gallantries in the Holy Land. He made use of the accession of power, which he acquired by this match, to assert his birthright to Normandy. This he did with great success, because he was favoured by the general inclination of the people for the blood of their ancient lords. Flushed with this

prosperous beginning, he aspired to greater things; he obliged the king of France to submit to a truce; and then he turned his arms to support the rights of his family in England, from whence Matilda retired, unequal to the troublesome part she had long acted. Worn out with age, and the clashing of furious factions, she shut herself up in a monastery, and left to her son the succession of a civil war. Stephen was now pressed with renewed vigour. Henry had rather the advantage in the field; Stephen had the possession of the government. Their fortunes appearing nearly balanced, and the fuel of dissension being consumed by a continual and bloody war of thirteen years, an accommodation was proposed, and accepted. Henry found it dangerous to refuse his consent, as the bishops and barons, even of his own party, dreaded the consequences, if a prince, in the prime of an ambitious youth, should establish an hereditary title by the force of foreign arms. This treaty, signed at Wallingford, left the possession of the crown for his life to Stephen, A. D. 1153. but secured the succession to Henry, whom that prince adopted. The castles erected in this reign were to be demolished; the exorbitant grants of the royal demesne to be resumed. To the son of Stephen all his private possessions were secured.

Thus ended this tedious and ruinous civil war. Stephen survived it near two years; and now finding himself more secure as the lawful tenant, than he had been as the usurping proprietor, of the crown, he no longer governed on the maxims of necessity. He made no new attempts in favour of his family, but spent the remainder of his reign in correcting the disorders which arose from his steps in its commencement, and in healing the wounds of so long and cruel a war. Thus he left the kingdom in peace to his successor; but his character, as it is usual where party is concerned, greatly disputed. Wherever his natural dispositions had room to exert themselves, they appeared virtuous and princely; but the lust to reign, which often attends great virtues, was fatal to his, frequently hid them, and always rendered them suspected.

CHAPTER VI.

REIGN OF HENRY II.

A. D. 1154. THE death of Stephen left an undisputed succession for the first time since the death of Edward the Confessor. Henry, descended equally from the Norman Conqueror and the old English kings, adopted by Stephen, acknowledged by the barons, united in himself every kind of title. It was grown into a custom for the king to grant a charter of liberties on his accession to the crown. Henry also granted a charter of that kind, confirming that of his grandfather; but as his situation was very different from that of his predecessors, his charter was different; reserved, short, dry, conceived in general terms; a gift, not a bargain. And indeed there seems to have been at that juncture but little occasion to limit a power, which seemed not more than sufficient to correct all the evils of an unlimited liberty. Henry spent the beginning of his reign in repairing the ruins of the royal authority, and in restoring to the kingdom peace and order, along with its ancient limits; and he may well be considered as the restorer of the English monarchy. Stephen had sacrificed the demesne of the Crown, and many of its rights, to his subjects; and the necessity of the times obliged both that prince and the empress Matilda to purchase in their turns the precarious friendship of the king of Scotland by a cession of almost all the country north of the Humber. But Henry obliged the king of Scotland to restore his acquisitions, and to renew his homage. He took the same methods with his barons. Not sparing the grants of his mother, he resumed what had been so lavishly squandered by both of the contending parties; who, to establish their claims, had given away almost everything that made them valuable. There never was a prince in Europe who better understood the advantages to be derived from its peculiar constitution, in which greater acquisitions of dominion are made by judicious marriages than by success in war. For having added to his patrimonial territories of Anjou and Normandy the duchy of Guienne by his own marriage, the male issue of the Dukes of Brittany failing, he took the opportunity of

A. D. 1158.

marrying his third son, Geoffrey, then an infant, to the heiress of that important province, an infant also; and thus uniting by so strong a link his northern to his southern dominions, he possessed in his own name, or in those of his wife and son, all that fine and extensive country, that is washed by the Atlantic Ocean, from Picardy quite to the foot of the Pyrenees.

Henry, possessed of such extensive territories, and aiming at further acquisitions, saw with indignation that the sovereign authority in all of them, especially in England, had been greatly diminished. By his resumptions he had indeed lessened the greatness of several of the nobility; he had by force of arms reduced those, who forcibly held the Crown-lands, and deprived them of their own estates for their rebellion. He demolished many castles, those perpetual sources of rebellion and disorder. But the great aim of his policy was to break the power of the clergy, which each of his predecessors, since Edward, had alternately strove to raise and to depress; at first, in order to gain that potent body to their interests; and then to preserve them in subjection to the authority which they had conferred. The clergy had elected Stephen; they had deposed Stephen, and elected Matilda; and in the instruments which they used on these occasions, they affirmed in themselves a general right of electing the kings of England. Their share both in the elevation and depression of that prince showed, that they possessed a power inconsistent with the safety and dignity of the state. The immunities which they enjoyed seemed no less prejudicial to the civil economy; and the rather, as in the confusion of Stephen's reign, many, to protect themselves from the prevailing violence of the time, or to sanctify their own disorders, had taken refuge in the clerical character. The church was never so full of scandalous persons, who being accountable only in the ecclesiastical courts, where no crime is punished with death, were guilty of every crime. A priest had about this time committed a murder attended with very aggravating circumstances. The king, willing at once to restore order and to depress the clergy, laid hold of this favourable opportunity to convoke the cause to his own court, when the atrociousness of the crime made all men look with an evil eye upon the claim of any privilege, which

might prevent the severest justice. The nation in general seemed but little inclined to controvert so useful a regulation with so potent a prince. Amidst this general acquiescence one man was found bold enough to oppose him, who for eight years together embroiled all his affairs, poisoned his satisfactions, endangered his dominions, and at length in his death triumphed over all the power and policy of this wise and potent monarch. This was Thomas à Becket, a man memorable for the great glory, and the bitter reproaches, he has met with from posterity. This person was the son of a respectable citizen of London; he was bred to the study of the civil and canon law, the education then used to qualify a man for public affairs, in which he soon made a distinguished figure. By the royal favour, and his own abilities, he rose in a rapid succession through several considerable employments, from an office under the sheriff of London, to be high chancellor of the kingdom. In this high post he showed a spirit as elevated; but it was rather a military spirit than that of the gown-man;—magnificent to excess in his living and appearance, and distinguishing himself in the tournaments and other martial sports of that age with much ostentation of courage and expense. The king, who favoured him greatly, and expected a suitable return, on the vacancy destined Becket, yet a layman, to the see of Canterbury, and hoped to find in him a warm promoter of the reformation he intended. Hardly a priest, he was made the first prelate in the kingdom. But no sooner was he invested with the clerical character, than the whole tenor of his conduct was seen to change all at once; of his pompous retinue a few plain servants only remained; a monastic temperance regulated his table; and his life, in all respects formed to the most rigid austerity, seemed to prepare him for that superiority he was resolved to assume, and the conflicts he foresaw he must undergo in this attempt.

A. D. 1162.

It will not be unpleasing to pause a moment at this remarkable period, in order to view in what consisted that greatness of the clergy, which enabled them to bear so very considerable a sway in all public affairs; what foundations supported the weight of so vast a power; whence it had its origin; what was the nature, and what the ground, of the immunities they claimed; that we may the more fully enter

into this important controversy, and may not judge, as some have inconsiderately done, of the affairs of those times by ideas taken from the present manners and opinions.

It is sufficiently known, that the first Christians, avoiding the pagan tribunals, tried most even of their civil causes before the bishop, who, though he had no direct coercive power, yet, wielding the sword of excommunication, had wherewithal to enforce the execution of his judgments. Thus the bishop had a considerable sway in temporal affairs, even before he was owned by the temporal power. But the emperors no sooner became Christian, than, the idea of profaneness being removed from the secular tribunals, the causes of the Christian laity naturally passed to that resort where those of the generality had been before. But the reverence for the bishop still remained, and the remembrance of his former jurisdiction. It was not thought decent that he, who had been a judge in his own court, should become a suitor in the court of another. The body of the clergy likewise, who were supposed to have no secular concerns for which they could litigate, and removed by their character from all suspicion of violence, were left to be tried by their own ecclesiastical superiors. This was, with a little variation sometimes in extending, sometimes in restraining, the bishops' jurisdiction, the condition of things whilst the Roman empire subsisted. But, though their immunities were great, and their possessions ample, yet living under an absolute form of government, they were powerful only by influence. No jurisdictions were annexed to their lands; they had no place in the senate, they were no order in the state.

From the settlement of the northern nations, the clergy must be considered in another light. The barbarians gave them large landed possessions; and by giving them land, they gave them jurisdiction, which, according to their notions, was inseparable from it. They made them an order in the state; and as all the orders had their privileges, the clergy had theirs, and were no less steady to preserve and ambitious to extend them. Our ancestors, having united the church dignities to the secular dignities of baronies, had so blended the ecclesiastical with the temporal power in the same persons, that it became almost impossible to separate them. The ecclesiastical was however prevalent in this composition, drew

to it the other, supported it, and was supported by it. But it was not the devotion only, but the necessity, of the times that raised the clergy to the excess of this greatness. The little learning which then subsisted, remained wholly in their hands. Few among the laity could even read; consequently the clergy alone were proper for public affairs. They were the statesmen, they were the lawyers; from them were often taken the bailiffs of the seigneurial courts; sometimes the sheriffs of counties, and almost constantly the justiciaries of the kingdom. The Norman kings, always jealous of their order, were always forced to employ them. In abbeys the law was studied; abbeys were the palladiums of the public liberty by the custody of the royal charters, and most of the records. Thus, necessary to the great by their knowledge, venerable to the poor by their hospitality, dreadful to all by the power of excommunication, the character of the clergy was exalted above everything in the state; and it could no more be otherwise in those days, than it is possible it should be so in ours.

Seld. Tithes, p. 482.

William the Conqueror made it one principal point of his politics to reduce the clergy; but all the steps he took in it were not equally well calculated to answer this intention. When he subjected church-lands to military service, the clergy complained bitterly, as it lessened their revenue; but I imagine it did not lessen their power in proportion; for by this regulation they came, like other great lords, to have their military vassals, who owed them homage and fealty; and this rather increased their consideration amongst so martial a people. The kings who succeeded him, though they also aimed at reducing the ecclesiastical power, never pursued their scheme on a great or legislative principle. They seemed rather desirous of enriching themselves by the abuses in the church, than earnest to correct them. One day they plundered, and the next day they founded, monasteries, as their rapaciousness or their scruples chanced to predominate; so that every attempt of that kind, having rather the air of tyranny than reformation, could never be heartily approved, or seconded by the body of the people.

The bishops must always be considered in the double capacity of clerks and barons. Their courts, therefore, had a

double jurisdiction; over the clergy and laity of their diocese for the cognizance of crimes against ecclesiastical law, and over the vassals of their barony as lords paramount. But these two departments, so different in their nature, they frequently confounded by making use of the spiritual weapon of excommunication to enforce the judgments of both; and this sentence, cutting off the party from the common society of mankind, lay equally heavy on all ranks; for, as it deprived the lower sort of the fellowship of their equals and the protection of their lord, so it deprived the lord of the services of his vassals, whether he or they lay under the sentence. This was one of the grievances which the king proposed to redress.

As some sanction of religion is mixed with almost every concern of civil life, and as the ecclesiastical court took cognizance of all religious matters, it drew to itself not only all questions relative to tithes and advowsons, but whatever related to marriages, wills, the estate of intestates, the breaches of oaths and contracts; in a word, everything which did not touch life or feudal property.

The ignorance of the bailiffs in lay courts, who were only possessed of some feudal maxims and the traditions of an uncertain custom, made this recourse to the spiritual courts the more necessary, where they could judge with a little more exactness by the lights of the canon and civil laws.

This jurisdiction extended itself by connivance, by necessity, by custom, by abuse, over lay persons and affairs. But the immunity of the clergy from lay cognizances was claimed, not only as a privilege essential to the dignity of their order, supported by the canons, and countenanced by the Roman law, but as a right confirmed by all the ancient laws of England.

Christianity, coming into England out of the bosom of the Roman empire, brought along with it all those ideas of immunity. The first trace we can find of this exemption from lay jurisdiction in England is in the laws of Etheldred;[1] it is more fully established in those of Canute;[2] but in the code of Henry I. it is twice distinctly affirmed.[3] This im-

[1] LL. Etheldred. *Si presbyter homicida fieret*, &c.

[2] LL. Canuti, 38, de ministro altaris homicidâ. Idem 40, de ordinatc capitis, 200.

[3] LL. H. I. 57, De querelâ vicinorum, et 56, De ordinato qui vitam

munity from the secular jurisdiction, whilst it seemed to encourage acts of violence in the clergy towards others, encouraged also the violence of others against them. The murder of a clerk could not be punished at this time by death; it was against a spiritual person; an offence wholly spiritual, of which the secular courts took no sort of cognizance. In the Saxon times two circumstances made such an exemption less a cause of jealousy; the sheriff sat with the bishop, and the spiritual jurisdiction was, if not under the control, at least under the inspection, of the lay officer; and then, as neither laity nor clergy were capitally punished for any offence, this privilege did not create so invidious and glaring a distinction between them. Such was the power of the clergy, and such the immunities, which the king proposed to diminish.

Becket, who had punished the ecclesiastic for his crime by ecclesiastical law, refused to deliver him over to the secular judges for further punishment, on the principle of law, that no man ought to be twice questioned for the same offence.

A. D. 1164. The king, provoked at this opposition, summoned a council of the barons and bishops at Clarendon; and here, amongst others of less moment, the following were unanimously declared to be the ancient prerogatives of the Crown. And it is something remarkable, and certainly makes much for the honour of their moderation, that the bishops and abbots, who must have composed so large and weighty a part of the great council, seem not only to have made no opposition to regulations which so remarkably contracted their jurisdiction, but even seem to have forwarded them.

1st, A clerk accused of any crime shall appear in the king's court, that it may be judged whether he belongs to ecclesiastical or secular cognizance. If to the former, a deputy shall go into the bishops' court to observe the trial; if the clerk be convicted, he shall be delivered over to the king's justiciary to be punished.

2nd, All causes concerning presentation, all causes concerning Frankalmoigne, all actions concerning breach of faith, shall be tried in the king's court.

forisfaciat, in Fœd. Guthrem. apud Spel. Concil. 376, 1st vol. LL. Edw. III., De correctione ordinatorum.

3rd, The king's tenant *in capite* shall not be excommunicated without the king's licence.

4th, No clerk shall go out of the kingdom without giving security that he will do nothing to the prejudice of the king or nation. And all appeals shall be tried at home.

These are the most material of the constitutions or assizes of Clarendon, famous for having been the first legal check given to the power of the clergy in England. To give these constitutions the greater weight, it was thought proper that they should be confirmed by a bull from the pope. By this step the king seemed to doubt the entireness of his own authority in his dominions; and by calling in foreign aid when it served his purpose, he gave it a force and a sort of legal sanction when it came to be employed against himself. But as no negotiation had prepared the pope in favour of laws designed in reality to abridge his own power, it was no wonder that he rejected them with indignation. Becket, who had not been prevailed on to accept them but with infinite reluctance, was no sooner apprized of the pope's disapprobation than he openly declared his own; he did penance in the humblest manner for his former acquiescence, and resolved to make amends for it by opposing the new constitutions with the utmost zeal. In this disposition the king saw that the archbishop might be more easily ruined than humbled, and his ruin was resolved. Immediately a number of suits, on various pretences, were commenced against him, in every one of which he was sure to be foiled; but these making no deadly blow at his fortunes, he was called to account for thirty thousand pounds, which he was accused of having embezzled during his chancellorship. It was in vain that he pleaded a full acquittance from the king's son, and Richard de Lucy, the guardian and justiciary of the kingdom, on his resignation of the seals; he saw it was already determined against him. Far from yielding under these repeated blows, he raised still higher the ecclesiastical pretensions, now become necessary to his own protection. He refused to answer to the charge, and appealed to the pope, to whom alone he seemed to acknowledge any real subjection. A great ferment ensued on this appeal. The courtiers advised that he should be thrown into prison, and that his temporalities should be seized. The bishops, willing to reduce

Becket without reducing their own order, proposed to accuse him before the pope, and to pursue him to degradation. Some of his friends pressed him to give up his cause, others urged him to resign his dignity. The king's servants threw out menaces against his life. Amidst this general confusion of passions and counsels, whilst every one according to his interests expected the event with much anxiety, Becket, in the disguise of a monk, escaped out of the nation, and threw himself into the arms of the king of France.

Henry was greatly alarmed at this secession, which put the archbishop out of his power, but left him in full possession of all his ecclesiastical weapons. An embassy was immediately despatched to Rome, in order to accuse Becket; but as Becket pleaded the pope's own cause before the pope himself, he obtained an easy victory over the king's ambassadors. Henry, on the other hand, took every measure to maintain his authority; he did everything worthy of an able politician, and of a king tenacious of his just authority. He likewise took measures not only to humble Becket, but also to lower that chair, whose exaltation had an ill influence on the throne. For he encouraged the bishop of London to revive a claim to the primacy; and thus, by making the rights of the see at least dubious, he hoped to render future prelates more cautious in the exercise of them. He inhibited, under the penalty of high treason, all ecclesiastics from going out of his dominions without licence, or any emissary of the pope's or archbishop's from entering them with letters of excommunication or interdict. And, that he might not supply arms against himself, the Peter-pence were collected with the former care, but detained in the royal treasury, that matter might be left to Rome both for hope and fear. In the personal treatment of Becket all the proceedings were full of anger; and by an unnecessary and unjust severity greatly discredited both the cause and character of the king; for he stripped of their goods, and banished, all the archbishop's kindred, all who were in any sort connected with him, without the least regard to sex, age, or condition. In the mean time, Becket, stung with these affronts, impatient of his banishment, and burning with all the fury, and the same zeal, which had occasioned it, continually threatened the king with the last exertions of

ecclesiastical power: and all things were thereby, and by the absence and enmity of the head of the English church, kept in great confusion.

During this unhappy contention several treaties were set on foot; but the disposition of all the parties, who interested themselves in this quarrel, very much protracted a determination in favour of either side. With regard to Rome, the then pope was Alexander the Third, one of the wisest prelates who had ever governed that see, and the most zealous for extending its authority. However, though incessantly solicited by Becket to excommunicate the king, and to lay the kingdom under an interdict, he was unwilling to keep pace with the violence of that enraged bishop. Becket's view was single: but the pope had many things to consider; an anti-pope then subsisted, who was strongly supported by the emperor; and Henry had actually entered into a negotiation with this emperor and this pretended pope. On the other hand, the king knew that the lower sort of people in England were generally affected to the archbishop, and much under the influence of the clergy. He was therefore fearful to drive the pope to extremities by wholly renouncing his authority. These dispositions in the two principal powers made way for several conferences leading to peace. But for a long time all their endeavours seemed rather to inflame than to allay the quarrel. Whilst the king, steady in asserting his rights, remembered with bitterness the archbishop's opposition; and whilst the archbishop maintained the claims of the church with a haughtiness natural to him, and which was only augmented by his sufferings, the king of France appeared sometimes to forward, sometimes to perplex, the negotiation; and this duplicity seemed to be dictated by the situation of his affairs. He was desirous of nourishing a quarrel, which put so redoubted a vassal on the defensive; but he was also justly fearful of driving so powerful a prince to forget that he was a vassal. All parties, however, wearied at length with a contest, by which all were distracted, and which in its issue promised nothing favourable to any of them, yielded at length to an accommodation, founded rather on an oblivion and silence of past disputes, than on the settlement of terms for preserving future tranquillity.

Becket returned in a sort of triumph to his see. Many of the dignified clergy, and not a few of the barons, lay under excommunication for the share they had in his persecution; but, neither broken by adversity nor softened by good fortune, he relented nothing of his severity, but referred them all for their absolution to the pope. Their resentments were revived with additional bitterness; new affronts were offered to the archbishop, which brought on new excommunications and interdicts. The contention thickened on all sides, and things seemed running precipitately to the former dangerous extremities, when the account of these contests was brought, with much aggravation, against Becket to the ears of the king, then in Normandy; who, foreseeing a new series of troubles, broke out in a violent passion of grief and anger, "I have no friends, or I had not so long been insulted by this haughty priest!" Four knights, who attended near his person, thinking that the complaints of a king are orders for revenge, and hoping a reward equal to the importance, and even guilt, of the service, silently departed; and passing with great diligence into England, in a short time they arrived at Canterbury. They entered the cathedral; they fell on the archbishop, just on the point of celebrating divine service, and with repeated blows of their clubs they beat him to the ground; they broke his skull in pieces, and covered the altar with his blood and brains.

A. D. 1171. The horror of this barbarous action, increased by the sacredness of the person who suffered, and of the place where it was committed, diffused itself on all sides with incredible rapidity; the clergy, in whose cause he fell, equalled him to the most holy martyrs; compassion for his fate made all men forget his faults; and the report of frequent miracles at his tomb sanctified his cause and character, and threw a general odium on the king. What became of the murderers is uncertain; they were neither protected by the king, nor punished by the laws, for the reason we have not long since mentioned. The king, with infinite difficulty, extricated himself from the consequences of this murder, which threatened, under the papal banners, to arm all Europe against him; nor was he absolved, but by renouncing the most material parts of the constitutions of Clarendon; by purging himself upon oath of the murder of

Becket; by doing a very humiliating penance at his tomb to expiate the rash words which had given occasion to his death; and by engaging to furnish a large sum of money for the relief of the Holy Land, and taking the cross himself as soon as his affairs should admit it. The king probably thought his freedom from the haughtiness of Becket cheaply purchased by these condescensions; and, without question, though Becket might have been justifiable, perhaps even laudable, for his steady maintenance of the privileges, which his church and his order had acquired by the care of his predecessors, and of which he by his place was the depository, yet the principles upon which he supported these privileges, subversive of all good government; his extravagant ideas of church power; the schemes he meditated, even to his death, to extend it yet further; his violent and unreserved attachment to the papacy, and that inflexible spirit, which all his virtues rendered but the more dangerous; made his death as advantageous at that time, as the means by which it was effected were sacrilegious and detestable.

Between the death of Becket and the king's absolution he resolved on the execution of a design, by which he reduced under his dominion a country, not more separated from the rest of Europe by its situation, than by the laws, customs, and way of life of the inhabitants: for the people of Ireland, with no difference but that of religion, still retained the native manners of the original Celtæ. The king had meditated this design from the very beginning of his reign, and had obtained a bull from the then pope, Adrian the Fourth, an Englishman, to authorize the attempt. He well knew, from the internal weakness and advantageous situation of this noble island, the easiness and importance of such a conquest. But at this particular time he was strongly urged to his engaging personally in the enterprise by two other powerful motives. For, first, the murder of Becket had bred very ill humours in his subjects, the chiefs of whom, always impatient of a long peace, were glad of any pretence for rebellion; it was therefore expedient, and serviceable to the Crown, to find an employment abroad for this spirit, which could not exert itself without being destructive at home. And, next, as he had obtained the grant of Ireland from the pope, upon condition of subjecting it to Peter-pence, he knew, that the

speedy performance of this condition would greatly facilitate his recovering the good graces of the court of Rome. Before we give a short narrative of the reduction of Ireland, I propose to lay open to the reader the state of that kingdom, that we may see what grounds Henry had to hope for success in this expedition.

Ireland is about half as large as England. In the temperature of the climate there is little difference, other than that more rain falls; as the country is more mountainous and exposed full to the westerly wind, which blowing from the Atlantic Ocean prevails during the greater part of the year. This moisture, as it has enriched the country with large and frequent rivers, and spread out a number of fair and magnificent lakes, beyond the proportion of other places, has on the other hand encumbered the island with an uncommon multitude of bogs and morasses; so that in general it is less praised for corn than pasturage, in which no soil is more rich and luxuriant. Whilst it possesses these internal means of wealth, it opens on all sides a great number of ports, spacious and secure, and by their advantageous situation inviting to universal commerce. But on these ports, better known than those of Britain in the time of the Romans, at this time there were few towns, scarce any fortifications, and no trade that deserves to be mentioned.

The people of Ireland lay claim to a very extravagant antiquity, through a vanity common to all nations. The accounts which are given by their ancient chronicles of their first settlements, are generally tales confuted by their own absurdity. The settlement of the greatest consequence, the best authenticated, and from which the Irish deduce the pedigree of the best families, is derived from Spain; it was called Clan Milea, or the descendants of Milesius, and Kin Scuit, or the race of Scyths, afterwards known by the name of Scots. The Irish historians suppose this race descended from a person called Gathel, a Scythian by birth, an Egyptian by education, the contemporary and friend of the prophet Moses. But these histories, seeming clear-sighted in the obscure affairs of so blind an antiquity, instead of passing for treasuries of ancient facts, are regarded by the judicious as modern fictions. In cases of this sort rational conjectures are more to be relied on than improbable relations. It is most probable

that Ireland was first peopled from Britain. The coasts of these countries are in some places in sight of each other. The language, the manners, and religion of the most ancient inhabitants of both are nearly the same. The Milesian colony, whenever it arrived in Ireland, could have made no great change in the manners or language, as the ancient Spaniards were a branch of the Celtæ, as well as the old inhabitants of Ireland. The Irish language is not different from that of all other nations, as Temple and Rapin, from ignorance of it, have asserted. On the contrary, many of its words bear a remarkable resemblance not only to those of the Welsh and Armoric, but also to the Greek and Latin. Neither is the figure of the letters very different from the vulgar character, though their order is not the same with that of other nations, nor the names, which are taken from the Irish proper names of several species of trees; a circumstance, which, notwithstanding their similitude to the Roman letters, argues a different original and great antiquity. The Druid discipline anciently flourished in that island; in the fourth century it fell down before the preaching of St. Patrick. Then the Christian religion was embraced, and cultivated with an uncommon zeal, which displayed itself in the number and consequence of the persons, who in all parts embraced the contemplative life. This mode of life, and the situation of Ireland, removed from the horror of those devastations which shook the rest of Europe, made it a refuge for learning, almost extinguished everywhere else. Science flourished in Ireland during the seventh and eighth centuries. The same cause which destroyed it in other countries, also destroyed it there. The Danes, then pagans, made themselves masters of the island after a long and wasteful war, in which they destroyed the sciences along with the monasteries in which they were cultivated. By as destructive a war they were at length expelled; but neither their ancient science nor repose returned to the Irish; who, falling into domestic distractions as soon as they were freed from their foreign enemies, sunk quickly into a state of ignorance, poverty, and barbarism; which must have been very great, since it exceeded that of the rest of Europe. The disorders in the church were equal to those in the civil economy, and furnished to the pope a plausible pretext for giving Henry a commission to conquer the kingdom, in order to reform it.

The Irish were divided into a number of tribes or clans, each clan forming within itself a separate government. It was ordered by a chief, who was not raised to that dignity either by election, or by the ordinary course of descent, but as the eldest and worthiest of the blood of the deceased lord. This order of succession, called Tanistry, was said to have been invented in the Danish troubles, lest the tribe, during a minority, should have been endangered for want of a sufficient leader. It was probably much more ancient; but it was, however, attended with very great and pernicious inconveniencies, as it was obviously an affair of difficulty to determine who should be called the worthiest of the blood; and a door being always left open for ambition, this order introduced a greater mischief than it was intended to remedy. Almost every tribe, besides its contention with the neighbouring tribes, nourished faction and discontent within itself. The chiefs we speak of were in general called Tierna, or Lords, and those of more consideration Riagh, or Kings; over these were placed five kings more eminent than the rest, answerable to the five provinces, into which the island was anciently divided. These again were subordinate to one head, who was called monarch of all Ireland, raised to that power by election, or, more properly speaking, by violence.

Whilst the dignities of the state were disposed of by a sort of election, the office of judges, who were called Brehons, the trades of mechanics, and even those arts which we are apt to consider as depending principally on natural genius, such as poetry and music, were confined in succession to certain races; the Irish imagining that greater advantages were to be derived from an early institution, and the affection of parents desirous of perpetuating the secrets of their art in their families, than from the casual efforts of particular fancy and application. This is much in the strain of the Eastern policy; but these and many other of the Irish institutions, well enough calculated to preserve good arts and useful discipline when these arts came to degenerate, were equally well calculated to prevent all improvement, and to perpetuate corruption, by infusing an invincible tenaciousness of ancient customs.

The people of Ireland were much more addicted to pas-

turage than agriculture, not more from the quality of their soil, than from a remnant of the Scythian manners. They had but few towns, and those not fortified, each clan living dispersed over its own territory. The few walled towns they had lay on the sea-coast; they were built by the Danes, and held after they had lost their conquests in the inland parts; here was carried on the little foreign trade which the island then possessed.

The Irish militia was of two kinds; one called *Kerns*, which were foot, slightly armed with a long knife or dagger, and almost naked; the other *Galloglasses*, who were horse, poorly mounted, and generally armed only with a battle-axe. Neither horse nor foot made much use of the spear, the sword, or the bow. With indifferent arms they had still worse discipline. In these circumstances their natural bravery, which, though considerable, was not superior to that of their invaders, stood them in little stead.

Such was the situation of things in Ireland, when Dermot, king of Leinster, having violently carried away the wife of one of the neighbouring petty sovereigns, Roderic, king of Connaught, and monarch of Ireland, joined with the injured husband to punish so flagrant an outrage; and with their united forces spoiled Dermot of his territories, and obliged him to abandon the kingdom. The fugitive prince, not unapprized of Henry's designs upon his country, threw himself at his feet, implored his protection, and promised to hold of him, as his feudatory, the sovereignty he should recover by his assistance. Henry was at this time at Guienne; nothing could be more agreeable to him than such an incident; but as his French dominions actually lay under an interdict on account of his quarrel with Becket, and all his affairs, both at home and abroad, were in a troubled and dubious situation, it was not prudent to remove his person, nor venture any considerable body of his forces, on a distant enterprise. Yet, not willing to lose so favourable an opportunity, he warmly recommended the cause of Dermot to his regency in England, permitting and encouraging all persons to arm in his favour: a permission, in this age of enterprise, greedily accepted by many; but the person who brought the most assistance to it, and indeed gave a form and spirit to the whole design, was Richard,

A. D. 1167.

Earl of Striaul, commonly known by the name of Strongbow. Dermot, to confirm in his interest this potent and warlike peer, promised him his daughter in marriage, with the reversion of his crown. The beginnings of so great an enterprise were formed with a very slender force. Not
A. D. 1169. four hundred men landed near Wexford; they took the town by storm. When reinforced they did not exceed twelve hundred; but being joined with three thousand men by Dermot, with an incredible rapidity of success they reduced Waterford, Dublin, Limerick, the only considerable cities in Ireland. By the novelty of their arms they had obtained some striking advantages in their first engagements; and by these advantages they attained a superiority of opinion over the Irish, which every success increased. Before the effect of this first impres-
A. D. 1172. sion had time to wear off, Henry, having settled his affairs abroad, entered the harbour of Cork with a fleet of four hundred sail, at once to secure the conquest, and the allegiance of the conquerors. The fame of so great a force, arriving under a prince dreaded by all Europe, very soon disposed all the petty princes, with their king Roderic, to submit and do homage to Henry. They had not been able to resist the arms of his vassals, and they hoped better treatment from submitting to the ambition of a great king, who left them everything but the honour of their independency, than from the avarice of adventurers, from which nothing was secure. The bishops and the body of the clergy greatly contributed to this submission, from respect to the pope, and the horror of their late defeats, which they began to regard as judgments. A national council was held at Cashel for bringing the church of Ireland to a perfect conformity, in rites and discipline, to that of England. It is not to be thought that in this council the temporal interests of England were entirely forgotten. Many of the English were established in their particular conquests under the tenure of knights-service, now first introduced into Ireland; a tenure which, if it has not proved the best calculated to secure the obedience of the vassal to the sovereign, has never failed in any instance of preserving a vanquished people in obedience to the conquerors. The English lords built strong castles on their demesnes; they put themselves at the head of the

tribes whose chiefs they had slain; they assumed the Irish garb and manners; and thus, partly by force, partly by policy, the first English families took a firm root in Ireland. It was indeed long before they were able entirely to subdue the island to the laws of England; but the continual efforts of the Irish, for more than four hundred years, proved insufficient to dislodge them.

Whilst Henry was extending his conquests to the western limits of the known world, the whole fabric of his power was privately sapped and undermined, and ready to overwhelm him with the ruins, in the very moment when he seemed to be arrived at the highest and most permanent point of grandeur and glory. His excessive power, his continual accessions to it, and an ambition which by words and actions declared that the whole world was not sufficient for a great man, struck a just terror into all the potentates near him; he was indeed arrived at that pitch of greatness, that the means of his ruin could only be found in his own family. A numerous offspring, which is generally considered as the best defence of the throne, and the support as well as ornament of declining royalty, proved on this occasion the principal part of the danger. Henry had in his lawful bed, besides daughters, four sons, Henry, Richard, Geoffrey, and John, all growing up with great hopes from their early courage and love of glory. No father was ever more delighted with these hopes, nor more tender and indulgent to his children. A custom had long prevailed in France for the reigning king to crown his eldest son in his life-time. By this policy, in turbulent times, and whilst the principles of succession were unsettled, he secured the crown to his posterity. Henry gladly imitated a policy enforced no less by paternal affection than its utility to public peace. He had, during his troubles with Becket, crowned his son Henry, then no more than sixteen years old. But the young king, even on the day of his coronation, discovered a haughtiness which threatened not to content itself with the share of authority to which the inexperience of his youth, and the nature of a provisional crown, confined him. The name of a king continually reminded him that he only possessed the name. The king of France, whose daughter he had espoused, fomented a discontent which grew with his years. Geoffrey, who had married

the heiress of Bretagne, on the death of her father claimed to no purpose the entire sovereignty of his wife's inheritance, which Henry, under a pretence of guardianship to a son of full age, still retained in his hands. Richard had not the same plausible pretences, but he had yet greater ambition. He contended for the duchy of Guienne before his mother's death, which alone could give him the colour of a title to it. The queen his mother, hurried on by her own unquiet spirit, or, as some think, stimulated by jealousy, encouraged their rebellion against her husband. The king of France, who moved all the other engines, engaged the king of Scotland, the Earl of Flanders, then a powerful prince, the Earl of Blois, and the Earl of Boulogne, in the conspiracy. The barons in Bretagne, in Guienne, and even in England, were ready to take up arms in the same cause; whether it was that they perceived the uniform plan the king had pursued in order to their reduction, or were solely instigated by the natural fierceness and levity of their minds, fond of every dangerous novelty. The historians of that time seldom afford us a tolerable insight into the causes of the transactions they relate; but whatever were the causes of so extraordinary a conspiracy, it was not discovered until the moment it was ready for execution. The first token of it appeared in the young king's demand to have either England or Normandy given up to him. The refusal of this demand served as a signal to all parties to put themselves in motion. The younger Henry fled into France. Lewis entered Normandy with a vast army. The barons of Bretagne under Geoffrey, and those of Guienne under Richard, rose in arms; the king of Scotland pierced into England; and the Earl of Leicester, at the head of fourteen thousand Flemings, landed in Suffolk.

It was on this trying occasion that Henry displayed a greatness independent of all fortune. For, beset by all the neighbouring powers, opposed by his own children, betrayed by his wife, abandoned by one part of his subjects, uncertain of the rest, every part of his state rotten and suspicious, his magnanimity grew beneath the danger; and when all the ordinary resources failed, he found superior resources in his own courage, wisdom, and activity. There were at that time dispersed over Europe bodies of mercenary troops, called Brabançons, composed of fugitives from different nations;—men,

who were detached from any country, and who, by making war a perpetual trade, and passing from service to service, had acquired an experience and military knowledge uncommon in those days. Henry took twenty thousand of these mercenaries into his service, and as he paid them punctually, and kept them always in action, they served him with fidelity. The papal authority, so often subservient, so often prejudicial, to his designs, he called to his assistance in a cause which did not misbecome it,—the cause of a father attacked by his children. This took off the ill impression left by Becket's death, and kept the bishops firm in their allegiance. Having taken his measures with judgment, he pursued the war in Normandy with vigour. In this war his mercenaries had a great and visible advantage over the feudal armies of France; the latter, not so useful while they remained in the field, entered it late in the summer, and commonly left it in forty days. The king of France was forced to raise the siege of Verneuil, to evacuate Normandy, and agree to a truce. Then, at the head of his victorious Brabançons, Henry marched into Brittany with an incredible expedition. The rebellious army, astonished as much by the celerity of his march as the fury of his attack, was totally routed. The principal towns and castles were reduced soon after. The custody of the conquered country being lodged in faithful hands, he flew to the relief of England. There his natural son Geoffrey, bishop elect of Ely, faithful during the rebellion of all his legitimate offspring, steadily maintained his cause, though with forces much inferior to his zeal. The king, before he entered into action, thought it expedient to perform his expiation at the tomb of Becket. Hardly had he finished this ceremony, when the news arrived that the Scotch army was totally defeated, and their king made prisoner. This victory was universally attributed to the prayers of Becket; and whilst it established the credit of the new saint, it established Henry in the minds of his people; they no longer looked upon their king as an object of the Divine vengeance, but as a penitent reconciled to Heaven, and under the special protection of the martyr he had made. The Flemish army, after several severe checks, capitulated to evacuate the kingdom. The rebellious barons submitted soon after. All was

A. D. 1173.

A. D. 1174.

quiet in England; but the king of France renewed hostilities in Normandy, and laid siege to Rouen. Henry recruited his army with a body of auxiliary Welsh, arrived at Rouen with his usual expedition, raised the siege, and drove the king of France quite out of Normandy. It was then that he agreed to an accommodation, and in the terms of peace which he dictated in the midst of victory to his sons, his subjects, and his enemies, there was seen on one hand the tenderness of a father, and on the other the moderation of a wise man, not insensible of the mutability of fortune.

The war, which threatened his ruin, being so happily ended, the greatness of the danger served only to enhance his glory: whilst he saw the king of France humbled, the Flemings defeated, the king of Scotland a prisoner, and his sons and subjects reduced to the bounds of their duty. He employed this interval of peace to secure its continuance, and to prevent a return of the like evils; for which reason he made many reforms in the laws and polity of his dominions. He instituted itinerant justices, to weaken the power of the great barons, and even of the sheriffs, who were hardly more obedient; an institution, which, with great public advantages, has remained to our times. In the spirit of the same policy he armed the whole body of the people; the English commonalty had been in a manner disarmed ever since the Conquest. In this regulation we may probably trace the origin of the Militia, which, being under the orders of the Crown rather in a political than a feudal respect, were judged more to be relied on than the soldiers of tenure, to whose pride and power they might prove a sort of counterpoise. Amidst these changes the affairs of the clergy remained untouched. The king had experienced how dangerous it was to attempt removing foundations so deeply laid both in strength and opinion. He therefore wisely aimed at acquiring the favour of that body, and turning to his own advantage a power he should in vain attempt to overthrow, but which he might set up against another power, which it was equally his interest to reduce.

A. D. 1176.

Though these measures were taken with the greatest judgment, and seemed to promise a peaceful evening to his reign, the seeds of rebellion remained still at home, and the

dispositions that nourished them were rather increased abroad. The parental authority, respectable at all times, ought to have the greatest force in times when the manners are rude and laws imperfect. At that time Europe had not emerged out of barbarism, yet this great natural bond of society was extremely weak. The number of foreign obligations and duties almost dissolved the family obligations. From the moment a young man was knighted, so far as related to his father, he became absolute master of his own conduct; but he contracted at the same time a sort of filial relation with the person who had knighted him. These various principles of duty distracted one another. The custom which then prevailed of bestowing lands and jurisdictions under the name of appanages to the sons of kings and the greater nobility, gave them a power which was frequently employed against the giver; and the military and licentious manners of the age almost destroyed every trace of every kind of regular authority. In the East, where the rivalship of brothers is so dangerous, such is the force of paternal power amongst a rude people, we scarce ever hear of a son in arms against his father. In Europe for several ages it was very common. It was Henry's great misfortune to suffer in a particular manner from this disorder. A. D. 1180. Philip succeeded Lewis, king of France; he followed closely the plan of his predecessor,—to reduce the great vassals, and the king of England, who was the greatest of them; but he followed it with far more skill and vigour, though he made use of the same instruments in the work. He revived the spirit of rebellion in the princes, Henry's sons. These young princes were never in harmony with each other but in a confederacy against their father, and the father had no resource but in the melancholy safety derived from the disunion of his children. This he thought it expedient to increase; but such policy when discovered has always a dangerous effect. The sons, having just quarrelled enough to give room for an explanation of each other's designs, and to display those of their father, enter into a new conspiracy. In the midst of these motions the young king A. D. 1183. dies, and showed at his death such signs of a sincere repentance as served to revive the old king's tenderness, and to take away all comfort for his loss. The death

of his third son, Geoffrey, followed close upon the heels of this funeral. He died at Paris, whither he had gone to concert measures against his father. Richard and John remained: Richard, fiery, restless, ambitious, openly took up arms, and pursued the war with implacable rancour, and such success, as drove the king, in the decline of his life, to a dishonourable treaty; nor was he then content, but excited new troubles. John was his youngest and favourite child; in him he reposed all his hopes, and consoled himself for the undutifulness of his other sons; but after concluding the treaty with the king of France and Richard, he found, too soon, that John had been as deep as any in the conspiracy. This was his last wound; afflicted by his children in their deaths, and harassed in their lives; mortified as a father and a king; worn down with cares and sorrows more than with years, he died, cursing his fortune, his children, and the hour of his birth. When he perceived that death approached him, by his own desire he was carried into a church and laid at the altar's foot. Hardly had he expired, when he was stripped, then forsaken by his attendants, and left a long time a naked and unheeded body in an empty church: affording a just consolation for the obscurity of a mean fortune, and an instructive lesson how little an outward greatness, and enjoyments foreign to the mind, contribute towards a solid felicity, in the example of one who was the greatest of kings and the unhappiest of mankind.

A. D. 1185.

A. D. 1189.

CHAPTER VII.

REIGN OF RICHARD I.

A. D. 1189. WHILST Henry lived, the king of France had always an effectual means of breaking his power by the divisions in his family. But now Richard succeeded to all the power of his father; with an equal ambition to extend it, with a temper infinitely more fiery and impetuous, and free from every impediment of internal dissension These circumstances filled the mind of Philip with great and just uneasiness. There was no security but in finding exer-

cise for the enterprising genius of the young king at a distance from home. The new crusade afforded an advantageous opportunity. A little before his father's death, Richard had taken the cross in conjunction with the king of France. So precipitate were the fears of that monarch, that Richard was hardly crowned when ambassadors were despatched to England to remind him of his obligation, and to pique his pride by acquainting him that their master was even then in readiness to fulfil his part of their common vow. An enterprise of this sort was extremely agreeable to the genius of Richard, where religion sanctified the thirst of military glory; and where the glory itself seemed but the more desirable by being unconnected with interest. He immediately accepted the proposal, and resolved to insure the success as well as the lustre of his expedition by the magnificence of his preparations. Not content with the immense treasures amassed by his father, he drew in vast sums by the sale of almost all the demesnes of the Crown, and of every office under it, not excepting those of the highest trust. The clergy, whose wealth and policy enabled them to take advantage of the necessity and weakness of the Croises, were generally the purchasers of both. To secure his dominions in his absence, he made an alliance with the princes of Wales and with the king of Scotland. To the latter he released, for a sum of money, the homage which had been extorted by his father.

His brother John gave him most uneasiness; but finding it unworthy or impracticable to use the severer methods of jealous policy, he resolved to secure his fidelity by loading him with benefits. He bestowed on him six earldoms; and gave him in marriage the lady Avisa, sole heiress of the great house of Gloucester; but as he gave him no share in the regency, he increased his power, and left him discontented in a kingdom committed to the care of new men, who had merited their places by their money.

It will be proper to take a view of the condition of the Holy Land at the time when this third crusade was set on foot to repair the faults committed in the two former. The conquests of the Croises, extending over Palestine and a part of Syria, had been erected into a sovereignty under the name of the kingdom of Jerusalem. This kingdom, ill ordered

within, surrounded on all sides by powerful enemies, subsisted by a strength not its own for near ninety years. But dissensions arising about the succession to the Crown between Guy of Lusignan and Raymond, Earl of Tripoli, Guy, either because he thought the assistance of the European princes too distant, or that he feared their decision, called in the aid of Saladin, sultan of Egypt. This able prince immediately entered Palestine. As the whole strength of the Christians in Palestine depended upon foreign succour, he first made himself master of the maritime towns; and then Jerusalem fell an easy prey to his arms; whilst the competitors contended with the utmost violence for a kingdom which no longer existed for either of them. All Europe was alarmed at this revolution. The banished patriarch of Jerusalem filled every place with the distresses of the Eastern Christians. The pope ordered a solemn fast to be for ever kept for this loss; and then, exerting all his influence, excited a new crusade, in which vast numbers engaged with an ardour unabated by their former misfortunes; but wanting a proper subordination rather than a sufficient force, they made but a slow progress, when Richard and Philip, at the head of more than a

A. D. 1190. 100,000 chosen men, the one from Marseilles, the other from Genoa, set sail to their assistance.

A. D. 1191. In his voyage to the Holy Land accident presented Richard with an unexpected conquest. A vessel of his fleet was driven by a storm to take shelter in the Isle of Cyprus. That island was governed by a prince named Isaac, of the imperial family of the Comneni, who not only refused all relief to the sufferers, but plundered them of the little remains of their substance. Richard, resenting this inhospitable treatment, aggravated by the insolence of the tyrant, turned his force upon Cyprus, vanquished Isaac in the field, took the capital city, and was solemnly crowned king of that island. But deeming it as glorious to give as to acquire a crown, he soon after resigned it to Lusignan, to satisfy him for his claim on Jerusalem; in whose descendants it continued for several generations, until, passing by marriage into the family of Cornaro, a Venetian nobleman, it was acquired to that state, the only state in Europe which had any real benefit by all the blood and treasure lavished in the holy war.

Richard arrived in Palestine some time after the king of France; his arrival gave new vigour to the operations of the Croises. He reduced Acre to surrender at discretion, which had been in vain besieged for two years, and in the siege of which an infinite number of Christians had perished; and so much did he distinguish himself on this and on all occasions, that the whole expedition seemed to rest on his single valour. The king of France, seeing him fully engaged, had all that he desired. The climate was disagreeable to his constitution, and the war, in which he acted but a second part, to his pride. He therefore hastened home to execute his projects against Richard, amusing him with oaths made to be violated; leaving indeed a part of his forces under the Duke of Burgundy, but with private orders to give him underhand all possible obstruction. Notwithstanding the desertion of his ally, Richard continued the war with uncommon alacrity. With very unequal numbers he engaged and defeated the whole army of Saladin, and slew 40,000 of his best troops. He obliged him to evacuate all the towns on the sea-coast; and spread the renown and terror of his arms over all Asia. A thousand great exploits did not, however, enable him to extend his conquests to the inland country. Jealousy, envy, cabals, and a total want of discipline reigned in the army of the Croises. The climate, and their intemperance more than the climate, wasted them with a swift decay. The vow which brought them to the Holy Land was generally for a limited time, at the conclusion of which they were always impatient to depart. Their armies broke up at the most critical conjunctures; as it was not the necessity of the service, but the extent of their vows, which held them together. As soon therefore as they had habituated themselves to the country, and attained some experience, they were gone; and new men supplied their places, to acquire experience by the same misfortunes, and to lose the benefit of it by the same inconstancy. Thus the war could never be carried on with steadiness and uniformity. On the other side, Saladin continually repaired his losses; his resources were at hand; and this great captain very judiciously kept possession of that mountainous country, which, formed by a perpetual ridge of Libanus, in a manner walls in the sea-coast of Palestine. There he hung, like a continual tempest, ready to burst over

the Christian army. On his rear was the strong city of Jerusalem, which secured a communication with the countries of Chaldea and Mesopotamia, from whence he was well supplied with everything. If the Christians attempted to improve their successes by penetrating to Jerusalem, they had a city powerfully garrisoned in their front, a country wasted and destitute of forage to act in, and Saladin, with a vast army on their rear, advantageously posted to cut off their convoys and reinforcements.

Richard was labouring to get over these disadvantages, when he was informed by repeated expresses of the disorder of his affairs in Europe,—disorders which arose from the ill dispositions he had made at his departure. The heads of his regency had abused their power; they quarrelled with each other, and the nobility with them. A sort of a civil war had arisen, in which they were deposed. Prince John was the mainspring of these dissensions; he engaged in a close communication of counsels with the king of France, who had seized upon several places in Normandy. It was with regret that Richard found himself obliged to leave a theatre on which he had planned such an illustrious scene of action. A constant emulation in courtesy and politeness, as well as in military exploits, had been kept up between him and Saladin. He now concluded a truce with that generous enemy; and on his departure sent a messenger to assure him that on its expiration he would not fail to be again in Palestine. Saladin replied, that if he must lose his kingdom he would choose to lose it to the king of England.

A. D. 1192. Thus Richard returned, leaving Jerusalem in the hands of the Saracens; and this end had an enterprise, in which two of the most powerful monarchs in Europe were personally engaged, an army of upwards of 100,000 men employed, and to furnish which the whole Christian world had been vexed and exhausted. It is a melancholy reflection, that the spirit of great designs can seldom be inspired but where the reason of mankind is so uncultivated that they can be turned to little advantage. With this war ended the fortune of Richard, who found the Saracens less dangerous than his Christian allies. It is not well known what motive induced him to land at Aquileia, at the bottom of the Gulf of Venice, in order to take his route

by Germany; but he pursued his journey through the territories of the Duke of Austria, whom he had personally affronted at the siege of Acre. And now, neither keeping himself out of the power of that prince, nor rousing his generosity by seeming to confide in it, he attempted to get through his dominions in disguise. Sovereigns do not easily assume the private character; their pride seldom suffers their disguise to be complete; besides, Richard had made himself but too well known. The duke, transported with the opportunity of base revenge, discovered him, seized him, and threw him into prison; from whence he was only released to be thrown into another. The emperor claimed him; and, A. D. 1193. without regarding, in this unfortunate captive, the common dignity of sovereigns, or his great actions in the common cause of Europe, treated him with yet greater cruelty.

To give a colour of justice to his violence, he proposed to accuse Richard at the diet of the empire upon certain articles relative to his conduct in the Holy Land. The news of the king's captivity caused the greatest consternation in all his good subjects; but it revived the hopes and machinations of Prince John, who bound himself by closer ties than ever to the king of France, seized upon some strong-holds in England, and, industriously spreading a report of his brother's death, publicly laid claim to the crown, as lawful successor. All his endeavours, however, served only to excite the indignation of the people, and to attach them the more firmly to their unfortunate prince. Eleanor, the queen dowager, as good a mother as she had been a bad wife, acted with the utmost vigour and prudence to retain them in their duty, and omitted no means to procure the liberty of her son. The nation seconded her with a zeal, in their circumstances, uncommon. No tyrant ever imposed so severe a tax upon his people as the affection of the people of England, already exhausted, levied upon themselves. The most favoured religious orders were charged on this occasion. The church-plate was sold. The ornaments of the most holy relics were not spared. And, indeed, nothing serves more to demonstrate the poverty of the kingdom, reduced by internal dissensions and remote wars, at that time, than the extreme difficulty of collecting the king's ransom, which amounted to no more

than 100,000 marks of silver, Cologne weight. For raising this sum the first taxation, the most heavy and general that was ever known in England, proved altogether insufficient. Another taxation was set on foot. It was levied with the same rigour as the former, and still fell short. Ambassadors were sent into Germany with all that could be raised, and with hostages for the payment of whatever remained. The king met these ambassadors as he was carried in chains to plead his cause before the diet of the empire. The ambassadors burst into tears at this affecting sight, and wept aloud; but Richard, though touched no less with the affectionate loyalty of his subjects than with his own fallen condition, preserved his dignity entire in his misfortunes, and with a cheerful air inquired of the state of his dominions, the behaviour of the king of Scotland, and the fidelity of his brother, the Count John. At the diet, no longer protected by the character of a sovereign, he was supported by his personal abilities. He had a ready wit, and great natural eloquence; and his high reputation, and the weight of his cause, pleading for him more strongly, the diet at last interested itself in his favour, and prevailed on the emperor to accept an excessive ransom for dismissing a prisoner whom he detained without the least colour of justice. Philip moved heaven and earth to prevent his enlargement; he negotiated, he promised, he flattered, he threatened, he outbid his extravagant ransom. The emperor, in his own nature more inclined to the bribe, which tempted him to be base, hesitated a long time between these offers. But as the payment of the ransom was more certain than Philip's promises, and as the instances of the diet, and the menaces of the pope, who protected Richard, as a prince serving under the cross, were of more immediate consequence than his threats, Richard was at length released; and though it is said the emperor endeavoured to seize him again, to extort another ransom, he escaped safely into England.

A. D. 1194. Richard on his coming to England found all things in the utmost confusion; but before he attempted to apply a remedy to so obstinate a disease, in order to wipe off any degrading ideas which might have arisen from his imprisonment, he caused himself to be new crowned. Then, holding his court of great council at South-

ampton, he made some useful regulations in the distribution of justice. He called some great offenders to a strict account. Count John deserved no favour, and he lay entirely at the king's mercy, who, by an unparalleled generosity, pardoned him his multiplied offences, only depriving him of the power of which he had made so bad a use. Generosity did not oblige him to forget the hostilities of the king of France. But to prosecute the war money was wanting, which new taxes and new devices supplied with difficulty and with dishonour. All the mean oppressions of a necessitous government were exercised on this occasion. All the grants which were made on the king's departure to the Holy Land were revoked on the weak pretence that the purchasers had sufficient recompense whilst they held them. Necessity seemed to justify this as well as many other measures that were equally violent. The whole revenue of the Crown had been dissipated; means to support its dignity must be found; and these means were the least unpopular, as most men saw with pleasure the wants of government fall upon those who had started into a sudden greatness by taking advantage of those wants.

Richard renewed the war with Philip, which continued, though frequently interrupted by truces, for about five years. In this war Richard signalized himself by that irresistible courage, which on all occasions gave him a superiority over the king of France. But his revenues were exhausted; a great scarcity reigned both in France and England; and the irregular manner of carrying on war in those days prevented a clear decision in favour of either party. Richard had still an eye on the Holy Land, which he considered as the only province worthy of his arms; and this continually diverted his thoughts from the steady prosecution of the war in France. The crusade, like a superior orb, moved along with all the particular systems of politics of that time, and suspended, accelerated, or put back, all operations on motives foreign to the things themselves. In this war, it must be remarked that Richard made a considerable use of the mercenaries who had been so serviceable to Henry the Second; and the king of France, perceiving how much his father Lewis had suffered by a want of that advantage, kept on foot a standing army in constant pay, which none of his pre-

decessors had done before him, and which afterwards for a long time very unaccountably fell into disuse in both kingdoms.

A. D. 1199. Whilst the war was carried on by intervals and starts, it came to the ears of Richard that a nobleman of Limoges had found on his lands a considerable hidden treasure. The king, necessitous and rapacious to the last degree, and stimulated by the exaggeration and marvellous circumstances which always attend the report of such discoveries, immediately sent to demand the treasure, under pretence of the rights of seigniory. The Limosin, either because he had really discovered nothing, or that he was unwilling to part with so valuable an acquisition, refused to comply with the king's demand, and fortified his castle. Enraged at the disappointment, Richard relinquished the important affairs in which he was engaged, and laid siege to this castle with all the eagerness of a man who has his heart set upon a trifle. In this siege he received a wound from an arrow, and it proved mortal; but in the last, as in all the other acts of his life, something truly noble shone out amidst the rash and irregular motions of his mind. The castle was taken before he died. The man from whom Richard had received the wound was brought before him. Being asked, why he levelled his arrow at the king, he answered, with an undaunted countenance, "that the king with his own hand had slain his two brothers; that he thanked God, who gave him an opportunity to revenge their deaths even with the certainty of his own." Richard, more touched with the magnanimity of the man than offended at the injury he had received, or the boldness of the answer, ordered that his life should be spared. He appointed his brother John to the succession: and with these acts ended a life and reign distinguished by a great variety of fortunes in different parts of the world, and crowned with great military glory; but without any accession of power to himself, or prosperity to his people, whom he entirely neglected, and reduced, by his imprudence and misfortunes, to no small indigence and distress.

In many respects, a striking parallel presents itself between this ancient king of England and Charles XII. of Sweden. They were both inordinately desirous of war, and rather generals than kings. Both were rather fond of glory

than ambitious of empire. Both of them made and deposed sovereigns. They both carried on their wars at a distance from home. They were both made prisoners by a friend and ally. They were both reduced by an adversary inferior in war, but above them in the arts of rule. After spending their lives in remote adventures, each perished at last near home, in enterprises not suited to the splendour of their former exploits. Both died childless; and both, by the neglect of their affairs, and the severity of their government, gave their subjects provocation and encouragement to revive their freedom. In all these respects the two characters were alike; but Richard fell as much short of the Swedish hero in temperance, chastity, and equality of mind, as he exceeded him in wit and eloquence. Some of his sayings are the most spirited that we find in that time; and some of his verses remain, which in a barbarous age might have passed for poetry.

CHAPTER VIII.

REIGN OF JOHN.

WE are now arrived at one of the most memorable periods in the English story; whether we consider the astonishing revolutions which were then wrought, the calamities in which both the prince and people were involved, or the happy consequences, which, arising from the midst of those calamities, have constituted the glory and prosperity of England for so many years. We shall see a throne, founded in arms, and augmented by the successive policy of five able princes, at once shaken to its foundations; first made tributary by the arts of a foreign power; then limited, and almost overturned, by the violence of its subjects. We shall see a king, to reduce his people to obedience, draw into his territories a tumultuary foreign army, and destroy his country instead of establishing his government. We shall behold the people, grown desperate, call in another foreign army, with a foreign prince at its head, and throw away that liberty which they had sacrificed everything to preserve. We shall see the arms of this prince successful against an estab- A. D. 1199.

lished king in the vigour of his years, ebbing in the full tide of their prosperity, and yielding to an infant; after this, peace and order and liberty restored; the foreign force and foreign title purged off, and all things settled as happily as beyond all hope.

Richard dying without lawful issue, the succession to his dominions again became dubious. They consisted of various territories, governed by various rules of descent, and all of them uncertain. There were two competitors; the first was Prince John, youngest son of Henry II.; the other was Arthur, son of Constance of Bretagne by Geoffrey, the third son of that monarch. If the right of consanguinity were only considered, the title of John to the whole succession had been indubitable. If the right of representation had then prevailed which now universally prevails, Arthur, as standing in the place of his father Geoffrey, had a solid claim. About Brittany there was no dispute. Anjou, Poitou, Touraine, and Guienne declared in favour of Arthur, on the principle of representation. Normandy was entirely for John. In England the point of law had never been entirely settled, but it seemed rather inclined to the side of consanguinity. Therefore in England, where this point was dubious at best, the claim of Arthur, an infant and a stranger, had little force against the pretensions of John, declared heir by the will of the late king, supported by his armies, possessed of his treasures, and at the head of a powerful party. He secured in his interests Hubert, archbishop of Canterbury, and Glanville, the chief justiciary; and by them the body of the ecclesiastics and the law. It is remarkable also that he paid court to the cities and boroughs, which is the first instance of that policy; but several of these communities now happily began to emerge from their slavery, and, taking advantage of the necessities and confusion of the late reign, increased in wealth and consequence, and had then first attained a free and regular form of administration. The towns, new to power, declared heartily in favour of a prince who was willing to allow that their declaration could confer a right. The nobility, who saw themselves beset by the church, the law, and the burghers, had taken no measures, nor even a resolution; and therefore had nothing left but to concur in acknowledging the title of John, whom they knew and hated. But though they

were not able to exclude him from the succession, they had strength enough to oblige him to a solemn promise of restoring those liberties and franchises which they had always claimed, without having ever enjoyed, or even perfectly understood. The clergy also took advantage of the badness of his title to establish one altogether as ill founded. Hubert, archbishop of Canterbury, in the speech which he delivered at the king's coronation, publicly affirmed that the crown of England was of right elective. He drew his examples in support of this doctrine, not from the histories of the ancient Saxon kings, although a species of election within a certain family had then frequently prevailed, but from the history of the first kings of the Jews; without doubt in order to revive those pretensions which the clergy first set up in the election of Stephen, and which they had since been obliged to conceal, but had not entirely forgotten. John accepted a sovereignty weakened in the very act by which he acquired it; but he submitted to the times. He came to the throne at the age of thirty-two. He had entered early into business; and had been often involved in difficult and arduous enterprises, in which he experienced a variety of men and fortunes. His father, whilst he was very young, had sent him into Ireland, which kingdom was destined for his portion, in order to habituate that people to their future sovereign, and to give the young prince an opportunity of conciliating the favour of his new subjects. But he gave on this occasion no good omens of capacity for government. Full of the insolent levity of a young man of high rank, without education, and surrounded with others equally unpractised, he insulted the Irish chiefs; and, ridiculing their uncouth garb and manners, he raised such a disaffection to the English government, and so much opposition to it, as all the wisdom of his father's best officers and counsellors was hardly able to overcome. In the decline of his father's life he joined in the rebellion of his brothers, with so much more guilt, as with more ingratitude and hypocrisy. During the reign of Richard he was the perpetual author of seditions and tumults; and yet was pardoned and even favoured by that prince to his death, when he very unaccountably appointed him heir to all his dominions.

It was of the utmost moment to John, who had no solid title, to conciliate the favour of all the world. Yet one of

his first steps, whilst his power still remained dubious and unsettled, was, on pretence of consanguinity, to divorce his wife Avisa, with whom he had lived many years, and to marry Isabella of Angoulême, a woman of extraordinary beauty, but who had been betrothed to Hugh, Count of Marche; thus disgusting at once the powerful friends of his divorced wife, and those of the Earl of Marche, whom he had so sensibly wronged.

The king of France, Philip Augustus, saw with pleasure these proceedings of John; as he had before rejoiced at the dispute about the succession. He had been always employed, and sometimes with success, to reduce the English power, through the reigns of one very able, and one very warlike, prince. He had greater advantages in this conjuncture, and a prince of quite another character now to contend with. He was therefore not long without choosing his part; and whilst he secretly encouraged the Count of Marche, already stimulated by his private wrongs, he openly supported the claim of Arthur to the duchies of Anjou and Touraine. It was the character of this prince readily to lay aside, and as readily to reässume, his enterprises, as his affairs demanded. He saw that he had declared himself too rashly, and that he was in danger of being assaulted upon every side. He saw it was necessary to break an alliance, which the nice circumstances and timid character of John would enable him to do. In fact, John was at this time united in a close alliance with the emperor and the Earl of Flanders; and these princes were engaged in a war with France. He had then a most favourable opportunity to establish all his claims, and at the same time to put the king of France out of a condition to question them ever after. But he suffered himself to be over-reached by the artifices of Philip; he consented to a

A. D. 1200. treaty of peace, by which he received an empty acknowledgment of his right to the disputed territories; and in return for which acknowledgment he renounced his alliance with the emperor. By this act he at once strengthened his enemy, gave up his ally, and lowered his character with his subjects and with all the world.

A. D. 1201. This treaty was hardly signed, when the ill consequences of his conduct became evident. The Earl of Marche and Arthur immediately renewed their claims

and hostilities, under the protection of the king of France, who made a strong diversion by invading Normandy. At the commencement of these motions, John, by virtue of a prerogative hitherto undisputed, summoned his English barons to attend him into France; but instead of a compliance with his orders, he was surprised with a solemn demand of their ancient liberties. It is astonishing that the barons should at that time have ventured on a resolution of such dangerous importance, as they had provided no sort of means to support them. But the history of those times furnishes many instances of the like want of design in the most momentous affairs; and shows that it is in vain to look for political causes for the actions of men, who were most commonly directed by a brute caprice, and were for the greater part destitute of any fixed principles of obedience or resistance. The king, sensible of the weakness of his barons, fell upon some of their castles with such timely vigour, and treated those whom he had reduced with so much severity, that the rest immediately and abjectly submitted. He levied a severe tax upon their fiefs; and, thinking himself more strengthened by this treasure than the forced service of his barons, he excused the personal attendance of most of them, and passing into Normandy he raised an army there. He found that his enemies had united their forces, and invested the castle of Mirabel, a place of im- A. D. 1202. portance, in which his mother, from whom he derived his right to Guienne, was besieged. He flew to the relief of this place with the spirit of a greater character, and the success was answerable. The Breton and Poitevin army was defeated; his mother was freed; and the young Duke of Brittany and his sister were made prisoners. The latter he sent into England, to be confined in the castle of Bristol; the former he carried with him to Rouen. The good fortune of John now seemed to be at its highest point; but it was exalted on a precipice; and this great victory proved the occasion of all the evils which afflicted his life.

John was not of a character to resist the temptation of having the life of his rival in his hands. All historians are as fully agreed that he murdered his nephew as they differ in the means by which he accomplished that crime. But the report was soon spread abroad, variously heightened in the

circumstances by the obscurity of the fact, which left all men at liberty to imagine and invent, and excited all those sentiments of pity and indignation which a very young prince of great hopes, cruelly murdered by his uncle, naturally inspire. Philip had never missed an occasion of endeavouring to ruin the king of England; and having now acquired an opportunity of accomplishing that by justice which he had in vain sought by ambition, he filled every place with complaints of the cruelty of John, whom, as a vassal to the Crown of France, the king accused of the murder of another vassal, and summoned him to Paris to be tried by his peers. It was by no means consistent either with the dignity or safety of John to appear to this summons. He had the argument of kings to justify what he had done. But as in all great crimes there is something of a latent weakness, and in a vicious caution something material is ever neglected, John, satisfied with removing his rival, took no thought about his enemy; but whilst he saw himself sentenced for non-appearance in the court of peers, whilst he saw the king of France entering Normandy with a vast army in consequence of this sentence, and place after place, castle after castle, falling before him, he passed his time at Rouen in the profoundest tranquillity; indulging himself in indolent amusements, and satisfied with vain threatenings and boasts, which only added greater shame to his inactivity. The English barons who had attended him in this expedition, disaffected from the beginning, and now wearied with being so long witnesses to the ignominy of their sovereign, retired to their own country, and there spread the report of his unaccountable sloth and cowardice. John quickly followed them; and returning into his kingdom, polluted with the charge of so heavy a crime, and disgraced by so many follies, instead of aiming by popular acts to reëstablish his character, he exacted a seventh of their moveables from the barons, on pretence that they had deserted his service. He laid the same imposition on the clergy, without giving himself the trouble of seeking for a pretext. He made no proper use of these great supplies; but saw the great city of Rouen, always faithful to its sovereigns, and now exerting the most strenuous efforts in his favour, obliged at length to surrender without the least attempt to relieve it. Thus the whole

A. D. 1203.

duchy of Normandy, originally acquired by the valour of his ancestors, and the source from which the greatness of his family had been derived, after being supported against all shocks for 300 years, was torn for ever from the stock of Rollo, and reunited to the Crown of France. Immediately all the rest of the provinces which he held on the continent, except a part of Guienne, despairing of his protection, and abhorring his government, threw themselves into the hands of Philip.

Meanwhile the king by his personal vices completed the odium which he had acquired by the impotent violence of his government. Uxorious and yet dissolute in his manners, he made no scruple frequently to violate the wives and daughters of his nobility, that rock on which tyranny has so often split. Other acts of irregular power, in their greatest excesses, still retain the characters of sovereign authority; but here the vices of the prince intrude into the families of the subject; and whilst they aggravate the oppression, lower the character of the oppressor.

In the disposition which all these causes had concurred universally to diffuse, the slightest motion in his kingdom threatened the most dangerous consequences. Those things which in quiet times would have only raised a slight controversy, now, when the minds of men were exasperated and inflamed, were capable of affording matter to the greatest revolutions. The affairs of the church, the winds which mostly governed the fluctuating people, were to be regarded with the utmost attention. Above all, the person who filled the see of Canterbury, which stood on a level with the throne itself, was a matter of the last importance. Just at this critical time died Hubert, archbishop of that see; a man who had a large share in procuring the crown for John, and in weakening its authority by his acts at the ceremony of the coronation, as well as by his subsequent conduct. Immediately on the death of this prelate, a cabal of obscure monks, of the abbey of St. Augustine, assemble by night; and, first binding themselves by a solemn oath not to divulge their proceedings until they should be confirmed by the pope, they elect one Reginald, their sub-prior, archbishop of Canterbury. The person elected immediately crossed the seas; but his vanity soon discovered the secret of his greatness.

The king received the news of this transaction with surprise and indignation. Provoked at such a contempt of his authority, he fell severely on the monastery, no less surprised than himself at the clandestine proceeding of some of its members. But the sounder part pacified him, in some measure, by their submission. They elected a person recommended by the king; and sent fourteen of the most respectable of their body to Rome to pray that the former proceedings should be annulled, and the later and more regular confirmed. To this matter of contention another was added. A dispute had long subsisted between the suffragan bishops of the province of Canterbury and the monks of the abbey of St. Austin; each claiming a right to elect the metropolitan. This dispute was now revived, and pursued with much vigour. The pretensions of the three contending parties were laid before the pope, to whom such disputes were highly pleasing; as he knew that all claimants willingly conspire to flatter and aggrandize that authority from which they expect a confirmation of their own. The first election he nulled, because its irregularity was glaring. The right of the bishops was entirely rejected. The pope looked with an evil eye upon those whose authority he was every day usurping. The second election was set aside, as made at the king's instance. This was enough to make it very irregular. The canon law had now grown up to its full strength. The enlargement of the prerogative of the pope was the great object of this jurisprudence; a prerogative which, founded on fictitious monuments, that are forged in an ignorant age, easily admitted by a credulous people, and afterwards confirmed and enlarged by these admissions, not satisfied with the supremacy, encroached on every minute part of church-government, and had almost annihilated the episcopal jurisdiction throughout Europe. Some canons had given the metropolitan a power of nominating a bishop, when the circumstances of the election were palpably irregular; and as it does not appear that there was any other judge of the irregularity than the metropolitan himself, the election below in effect became nugatory. The pope, taking the irregularity in this case for granted, in virtue of this canon, and by his plenitude of power, ordered the deputies of Canterbury to proceed to a new election. At

A. D. 1208.

the same time he recommended to their choice Stephen Langton, their countryman; a person already distinguished for his learning, of irreproachable morals, and free from every canonical impediment. This authoritative request the monks had not the courage to oppose in the pope's presence, and in his own city. They murmured and submitted. In England this proceeding was not so easily ratified: John drove the monks of Canterbury from their monastery; and having seized upon their revenues, threatened the effects of the same indignation against all those who seemed inclined to acquiesce in the proceedings of Rome. But Rome had not made so bold a step with intention to recede. On the king's positive refusal to admit Langton, and the expulsion of the monks of Canterbury, England was laid under an interdict. Then divine service at once ceased throughout the kingdom: the churches were shut. The sacraments were suspended. The dead were buried without honour, in highways and ditches; and the living deprived of all spiritual comfort. On the other hand, the king let loose his indignation against the ecclesiastics; seizing their goods, throwing many into prison, and permitting or encouraging all sorts of violence against them. The kingdom was thrown into the most terrible confusion; whilst the people, uncertain of the object or measure of their allegiance, and distracted with opposite principles of duty, saw themselves deprived of their religious rites by the ministers of religion; and their king, furious with wrongs not caused by them, falling indiscriminately on the innocent and the guilty; for John, instead of soothing his people in this their common calamity, sought to terrify them into obedience. In a progress which he made into the north, he threw down the enclosures of his forests, to let loose the wild beasts upon their lands; and as he saw the papal proceedings increase with his opposition, he thought it necessary to strengthen himself by new devices. He extorted hostages, and a new oath of fidelity, from his barons. He raised a great army, to divert the thoughts of his subjects from brooding too much on their distracted condition. This army he transported into Ireland; and as it happened to his father in a simple dispute with the pope, whilst he was dubious of his hereditary kingdom, he subdued Ireland. At this time he is said to have established

the English laws in that kingdom, and to have appointed itinerant justices.

At length the sentence of excommunication was fulminated against the king. In the same year the same sentence was pronounced upon the Emperor Otho; and this daring pope was not afraid at once to drive to extremities the two greatest princes in Europe. And, truly, nothing is more remarkable than the uniform steadiness of the court of Rome in the pursuits of her ambitious projects. For knowing that pretensions which stand merely in opinion cannot bear to be questioned in any part, though she had hitherto seen the interdict produce but little effect, and perceived that the excommunication itself could draw scarce one poor bigot from the king's service, yet she receded not the least point from the utmost of her demand. She broke off an accommodation just on the point of being concluded, because the king refused to repair the losses which the clergy had suffered, though he agreed to everything else, and even submitted to receive the archbishop, who, being obtruded on him, had in reality been set over him. But the pope, bold as politic, determined to render him perfectly submissive; and to this purpose brought out the last arms of the ecclesiastic stores, which were reserved for the most extreme occasions. Having first released the English subjects from their oath of allegiance, by an unheard-of presumption he formally deposed John from his throne and dignity; he invited the king of France to take possession of the forfeited crown; he called forth all persons from all parts of Europe to assist in this expedition, by the pardons and privileges of those who fought for the Holy Land.

This proceeding did not astonish the world. The king of France, having driven John from all he held on the continent, gladly saw religion itself invite him to further conquests. He summoned all his vassals, under the penalty of felony, and the opprobrious name of *culvertage*,[1] (a name of all things dreaded by both nations,) to attend in this expedition; and such force had this threat, and the hope of plunder in England, that a very great army was in a short time assembled. A fleet also rendezvoused in the mouth

[1] A word of uncertain derivation, but which signifies some scandalous species of cowardice

of the Seine, by the writers of these times said to consist of 1700 sail. On this occasion John roused all his powers. He called upon all his people, who, by the duty of their tenure or allegiance, were obliged to defend their lord and king; and in his writs stimulated them by the same threats of *culverage*, which had been employed against him. They operated powerfully in his favour. His fleet in A. D. 1211. number exceeded the vast navy of France; his army was in everything but heartiness to the cause equal, and, extending along the coast of Kent, expected the descent of the French forces. Whilst these two mighty armies overspread the opposite coasts, and the sea was covered with their fleets, and the decision of so vast an event was hourly expected, various thoughts rose in the minds of those who moved the springs of these affairs. John, at the head of one of the finest armies in the world, trembled inwardly when he reflected how little he possessed or merited their confidence. Wounded by the consciousness of his crimes, excommunicated by the pope, hated by his subjects, in danger of being at once abandoned by heaven and earth, he was filled with the most fearful anxiety. The legates of the pope had hitherto seen everything succeed to their wish. But having made use of an instrument too great for them to wield, they apprehended that, when it had overthrown their adversary, it might recoil upon the court of Rome itself; that to add England to the rest of Philip's great possessions was not the way to make him humble; and that, in ruining John to aggrandize that monarch, they should set up a powerful enemy in the place of a submissive vassal.

They had done enough to give them a superiority in any negotiation, and they privately sent an embassy to the king of England. Finding him very tractable, they hasted to complete the treaty. The pope's legate, Pandulph, was intrusted with this affair. He knew the nature of men to be such, that they seldom engage willingly if the whole of a hardship be shown them at first, but that having advanced a certain length, their former concessions are an argument with them to advance further, and to give all, because they have already given a great deal. Therefore he began with exacting an oath from the king, by which, without showing the extent of his design, he engaged him to everything he

could ask. John swore to submit to the legate in all things relating to his excommunication. And first he was obliged to accept Langton as archbishop; then to restore the monks of Canterbury, and other deprived ecclesiastics, and to make them a full indemnification for all their losses. And now, by these concessions, all things seemed to be perfectly settled. The cause of the quarrel was entirely removed. But when the king expected for so perfect a submission a full absolution, the legate began a laboured harangue on his rebellion, his tyranny, and the innumerable sins he had committed; and in conclusion declared, that there was no way left to appease God and the church but to resign his crown to the holy see, from whose hands he should receive it purified from all pollutions, and hold it for the future by homage, and an annual tribute.

John was struck motionless at a demand so extravagant and unexpected. He knew not on which side to turn. If he cast his eyes toward the coast of France, he there saw his enemy Philip, who considered him as a criminal as well as an enemy, and who aimed not only at his crown but his life, at the head of an innumerable multitude of fierce people, ready to rush in upon him. If he looked at his own army, he saw nothing there but coldness, disaffection, uncertainty, distrust, and a strength in which he knew not whether he ought most to confide or fear. On the other hand, the papal thunders, from the wounds of which he was still sore, were levelled full at his head. He could not look steadily at these complicated difficulties; and truly it is hard to say what choice he had, if any choice were left to the kings in what concerns the independence of their crown. Surrounded, therefore, with these difficulties, and that all his late humiliations might not be rendered as ineffectual as they were ignominious, he took the last step; and, in the presence of a numerous assembly of his peers and prelates, who turned their eyes from this mortifying sight, formally resigned his crown to the pope's legate; to whom at the same time he did homage, and paid the first-fruits of his tribute. Nothing could be added to the humiliation of the king upon this occasion but the insolence of the legate, who spurned the treasure with his foot, and let the crown remain a long time on the ground before he restored it to the degraded owner.

In this proceeding the motives of the king may be easily discovered; but how the barons of the kingdom, who were deeply concerned, suffered, without any protestation, the independency of the Crown to be thus forfeited, is mentioned by no historian of that time. In civil tumults it is astonishing how little regard is paid by all parties to the honour or safety of their country. The king's friends were probably induced to acquiesce by the same motives that had influenced the king. His enemies, who were the most numerous, perhaps saw his abasement with pleasure, as they knew this action might be one day employed against him with effect. To the bigots it was enough that it aggrandized the pope. It is perhaps worthy of observation, that the conduct of Pandulph towards King John bore a very great affinity to that of the Roman consuls to the people of Carthage in the last Punic war; drawing them from concession to concession, and carefully concealing their design, until they made it impossible for the Carthaginians to resist. Such a strong resemblance did the same ambition produce in such distant times; and it is far from the sole instance in which we may trace a similarity between the spirit and conduct of the former and latter Rome in their common design on the liberties of mankind.

The legates, having thus triumphed over the king, passed back into France, but without relaxing the interdict or excommunication, which they still left hanging over him, lest he should be tempted to throw off the chains of his new subjection. Arriving in France, they delivered their orders to Philip with as much haughtiness as they had done to John. They told him that the end of the war was answered in the humiliation of the king of England, who had been rendered a dutiful son of the church: and that if the king of France should, after this notice, proceed to further hostilities, he had to apprehend the same sentence which had humbled his adversary. Philip, who had not raised so great an army with a view of reforming the manners of King John, would have slighted these threats, had he not found that they were seconded by the ill dispositions of a part of his own army. The Earl of Flanders, always disaffected to his cause, was glad of this opportunity to oppose him; and only following him through fear, withdrew his A. D. 1213.

forces, and now openly opposed him. Philip turned his arms against his revolted vassal. The cause of John was revived by this dissension; and his courage seemed rekindled. Making one effort of a vigorous mind, he brought his fleet to an action of the French navy, which he entirely destroyed on the coast of Flanders, and thus freed himself from the terror of an invasion. But when he intended to embark and improve his success, the barons refused to follow him. They alleged that he was still excommunicated, and that they would not follow a lord under the censures of the church. This demonstrated to the king the necessity of a speedy absolution; and he received it this year from the hands of Cardinal Langton.

That archbishop no sooner came into the kingdom than he discovered designs very different from those which the pope had raised him to promote. He formed schemes of a very deep and extensive nature; and became the first mover in all the affairs which distinguished the remainder of this reign. In the oath which he administered to John on his absolution he did not confine himself solely to the ecclesiastical grievances, but made him swear to amend his civil government; to raise no tax without the consent of the great council; and to punish no man but by the judgment of his court. In these terms we may see the Great Charter traced in miniature. A new scene of contention was opened; new pretensions were started; a new scheme was displayed. One dispute was hardly closed when he was involved in another; and this unfortunate king soon discovered, that to renounce his dignity was not the way to secure his repose. For, being cleared from the excommunication, he resolved to pursue the war in France, in which he was not without a prospect of success; but the barons refused upon new pretences, and not a man would serve. The king, incensed to find himself equally opposed in his lawful and unlawful commands, prepared to avenge himself in his accustomed manner; and to reduce the barons to obedience by carrying war into their estates. But he found by this experiment that his power was at an end. The archbishop followed him; confronted him with the liberties of his people; reminded him of his late oath; and threatened to excommunicate every person who should obey him in his illegal proceedings. The king,

first provoked, afterwards terrified, at this resolution, forbore to prosecute the recusants.

The English barons had privileges, which they knew to have been violated; they had always kept up the memory of the ancient Saxon liberty; and if they were the conquerors of Britain, they did not think that their own servitude was the just fruit of their victory. They had, however, but an indistinct view of the object at which they aimed; they rather felt their wrongs than understood the cause of them; and having no head nor council, they were more in a condition of distressing their king, and disgracing their country by their disobedience, than of applying any effectual remedy to their grievances. Langton saw these dispositions and these wants. He had conceived a settled plan for reducing the king; and all his actions tended to carry it into execution. This prelate, under pretence of holding an ecclesiastical synod, drew together privately some of the principal barons to the church of St. Paul in London. There, having expatiated on the miseries which the kingdom suffered, and having explained at the same time the liberties to which it was entitled, he produced the famous charter of Henry I., long concealed, and of which, with infinite difficulty, he had procured an authentic copy. This he held up to the barons as the standard about which they were to unite. These were the liberties which their ancestors had received by the free concession of a former king; and these the rights which their virtue was to force from the present, if (which God forbid) they should find it necessary to have recourse to such extremities. The barons, transported to find an authentic instrument to justify their discontent, and to explain and sanction their pretensions, covered the archbishop with praises; readily confederated to support their demands; and, binding themselves by every obligation of human and religious faith to vigour, unanimity, and secrecy, they departed to confederate others in their design. A. D. 1214.

This plot was in the hands of too many to be perfectly concealed; and John saw, without knowing how to ward it off, a more dangerous blow levelled at his authority than any of the former. He had no resources within his kingdom, where all ranks and orders were united against him by

one common hatred. Foreign alliance he had none among temporal powers. He endeavoured, therefore, if possible, to draw some benefit from the misfortune of his new circumstances; he threw himself upon the protection of the papal power, which he had so long and with such reason opposed. The pope readily received him into his protection; but took this occasion to make him purchase it by another and more formal resignation of his crown. His present necessities, and his habits of humiliation, made this second degradation easy to the king. But Langton, who no longer acted in subservience to the pope, from whom he had now nothing further to expect, and who had put himself at the head of the patrons of civil liberty, loudly exclaimed at this indignity, protested against the resignation, and laid his protestation on the altar.

This was more disagreeable to the barons than the first resignation, as they were sensible that he now degraded himself only to humble his subjects. They were, however, once more patient witnesses to that ignominious act, and were so much overawed by the pope, or had brought their design to so little maturity, that the king, in spite of it, still found means and authority to raise an army, with which he made a final effort to recover some part of his dominions in France. The juncture was altogether favourable to his design. Philip had all his attention abundantly employed in another quarter against the terrible attacks of the Emperor Otho, in a confederacy with the Earl of Flanders. John, strengthened by this diversion, carried on the war in Poitou for some time with good appearances. The battle of Bovines, which was fought this year, put an end to all these hopes. In this battle the imperial army, consisting of 150,000 men, were defeated by a third of their number of French forces. The emperor himself, with difficulty escaping from the field, survived but a short time a battle which entirely broke his strength. So signal a success established the grandeur of France upon immovable foundations. Philip rose continually in reputation and power, whilst John continually declined in both; and as the king of France was now ready to employ against him all his forces, so lately victorious, he sued by the mediation of the pope's legate for a truce, which was granted to him for five years. Such truces stood in the

place of regular treaties of peace, which were not often made at that time.

The barons of England had made use of the king's absence to bring their confederacy to form; and now, seeing him return with so little credit, his allies discomfited, and no hope of a party among his subjects, they appeared in a body before him at London. All in complete armour, and in the guise of defiance, they presented a petition, very humble in the language, but excessive in the substance; in which they declared their liberties, and prayed that they might be formally allowed and established by the royal authority. The king resolved not to submit to their demands; but being at present in no condition to resist, he required time to consider of so important an affair. The time, which was granted to the king to deliberate, he employed in finding means to avoid a compliance. He took the cross, by which he hoped to render his person sacred. He obliged the people to renew their oath of fealty; and, lastly, he had recourse to the pope. Fortified by all the devices which could be used to supply the place of a real strength, he ventured, when the barons renewed their demands, to give them a positive refusal; he swore by the feet of God (his usual oath) that he would never grant them such liberties as must make a slave of himself. A. D. 1215.

The barons, on this answer, immediately fly to arms: they rise in every part; they form an army, and appoint a leader; and as they knew that no design can involve all sorts of people, or inspire them with extraordinary resolution, unless it be animated with religion, they called their leader the marshal of the army of God and holy church. The king was wholly unprovided against so general a defection. The city of London, the possession of which has generally proved a decisive advantage in the English civil wars, was betrayed to the barons. He might rather be said to be imprisoned than defended in the Tower of London, to which close siege was laid; whilst the marshal of the barons' army, exercising the prerogatives of royalty, issued writs to summon all the lords to join the army of liberty; threatening equally all those who should adhere to the king, and those who betrayed an indifference to the cause by their neutrality. John, deserted by all, had no resource but in temporizing and submission.

Without questioning in any part the terms of a treaty, which he intended to observe in none, he agreed to everything the barons thought fit to ask; hoping that the exorbitancy of their demands would justify in the eyes of the world the breach of his promises. The instruments by which the barons secured their liberties were drawn up in form of charters, and in the manner by which grants had been usually made to monasteries; with a preamble signifying, that it was done for the benefit of the king's soul, and those of his ancestors. For the place of solemnizing this remarkable act, they chose a large field, overlooked by Windsor, called Running-mede, which in our present tongue signifies the meadow of council; a place long consecrated by public opinion, as that wherein the quarrels and wars which arose in the English nation, when divided into kingdoms or factions, had been terminated from the remotest times. Here it was that King John, on the 15th day of June, in the year of our Lord 1215, signed those two memorable instruments, which first disarmed the Crown of its unlimited prerogatives, and laid the foundation of English liberty. One was called the Great Charter; the other, the Charter of the Forest. If we look back to the state of the nation at that time, we shall the better comprehend the spirit and necessity of these grants.

Besides the ecclesiastical jurisprudence at that time, two systems of laws, very different from each other in their object, their reason, and their authority, regulated the interior of the kingdom: the Forest law, and the Common law. After the Northern nations had settled here and in other parts of Europe, hunting, which had formerly been the chief means of their subsistence, still continued their favourite diversion. Great tracts of each country, wasted by the wars in which it was conquered, were set apart for this kind of sport, and guarded in a state of desolation by strict laws and severe penalties. When such waste lands were in the hands of subjects, they were called chases; when in the power of the sovereign, they were denominated forests. These forests lay properly within the jurisdiction of no hundred, county, or bishoprick; and therefore being out both of the common and the spiritual law, they were governed by a law of their own, which was such as the king by his private will thought proper to impose. There were reckoned in England no less than

sixty-eight royal forests, some of them of vast extent. In these great tracts were many scattered inhabitants; and several persons had property of wood-land, and other soil, enclosed within their bounds. Here the king had separate courts and particular justiciaries: a complete jurisprudence, with all its ceremonies and terms of art, was formed; and it appears that these laws were better digested, and more carefully enforced, than those which belonged to civil government. They had, indeed, all the qualities of the worst of laws. Their professed object was to keep a great part of the nation desolate. They hindered communication, and destroyed industry. They had a trivial object, and most severe sanctions; for as they belonged immediately to the king's personal pleasures, by the lax interpretation of treason in those days, all considerable offences against the forest law, such as killing the beasts of game, were considered as high treason, and punished, as high treason then was, by truncation of limbs, and loss of eyes and testicles. Hence arose a thousand abuses, vexatious suits, and pretences for imposition upon all those who lived in or near these places. The deer were suffered to run loose upon their lands; and many oppressions were used with relation to the claim of common-age, which the people had in most of the forests. The Norman kings were not the first makers of the forest law; it subsisted under the Saxon and Danish kings. Canute the Great composed a body of those laws, which still remains. But under the Norman kings they were enforced with greater rigour, as the whole tenor of the Norman government was more rigorous. Besides, new forests were frequently made, by which private property was outraged in a grievous manner. Nothing, perhaps, shows more clearly how little men are able to depart from the common course of affairs, than that the Norman kings, princes of great capacity, and extremely desirous of absolute power, did not think of peopling these forests; places under their own uncontrolled dominion, and which might have served as so many garrisons dispersed throughout the country. The Charter of the Forests had for its object the disafforesting several of those tracts; the prevention of future afforestings; the mitigation and ascertainment of the punishments for breaches of the forest law.

The common law, as it then prevailed in England, was

in a great measure composed of some remnants of the old Saxon customs, joined to the feudal institutions brought in at the Norman conquest. And it is here to be observed, that the constitutions of Magna Charta are by no means a renewal of the laws of St. Edward, or the ancient Saxon laws, as our historians and law-writers generally, though very groundlessly, assert. They bear no resemblance, in any particular, to the laws of St. Edward, or to any other collection of these ancient institutions. Indeed, how should they? The object of Magna Charta is the correction of the feudal policy, which was first introduced, at least in any regular form, at the conquest, and did not subsist before it. It may be further observed, that in the preamble to the Great Charter it is stipulated that the barons shall *hold* the liberties, there granted *to them and their heirs*, from the *king and his heirs:* which shows that the doctrine of an unalienable tenure was always uppermost in their minds. Their idea even of liberty was not (if I may use the expression) perfectly free; and they did not claim to possess their privileges upon any natural principle or independent bottom, but, just as they held their lands, from the king. This is worthy of observation.

By the feudal law all landed property is, by a feigned conclusion, supposed to be derived, and therefore to be mediately or immediately held, from the Crown. If some estates were so derived, others were certainly procured by the same original title of conquest, by which the crown itself was acquired; and the derivation from the king could in reason only be considered as a fiction of law. But its consequent rights being once supposed, many real charges and burdens grew from a fiction made only for the preservation of subordination; and in consequence of this, a great power was exercised over the persons and estates of the tenants. The fines on the succession to an estate, called in the feudal language *Reliefs*, were not fixed to any certainty; and were therefore frequently made so excessive, that they might rather be considered as redemptions, or new purchases, than acknowledgments of superiority and tenure. With respect to that most important article of marriage, there was, in the very nature of the feudal holding, a great restraint laid upon it. It was of importance to the lord, that the person who

received the feud should be submissive to him; he had therefore a right to interfere in the marriage of the heiress who inherited the feud. This right was carried further than the necessity required; the male heir himself was obliged to marry according to the choice of his lord; and even widows, who had made one sacrifice to the feudal tyranny, were neither suffered to continue in the widowed state, nor to choose for themselves the partners of their second bed. In fact, marriage was publicly set up to sale. The ancient records of the exchequer afford many instances where some women purchased, by heavy fines, the privilege of a single life; some the free choice of a husband; others the liberty of rejecting some person particularly disagreeable. And, what may appear extraordinary, there are not wanting examples, where a woman has fined in a considerable sum, that she might not be compelled to marry a certain man; the suitor on the other hand has outbid her; and solely by offering more for the marriage than the heiress could to prevent it, he carried his point directly and avowedly against her inclinations. Now, as the king claimed no right over his immediate tenants that they did not exercise in the same, or in a more oppressive, manner over their vassals, it is hard to conceive a more general and cruel grievance than this shameful market, which so universally outraged the most sacred relations among mankind. But the tyranny over women was not over with the marriage. As the king seized into his hands the estate of every deceased tenant in order to secure his relief, the widow was driven often by a heavy composition to purchase the admission to her dower, into which it should seem she could not enter without the king's consent.

All these were marks of a real and grievous servitude. The Great Charter was made not to destroy the root, but to cut short the overgrown branches, of the feudal service; first, in moderating, and in reducing to a certainty, the reliefs which the king's tenants paid on succeeding to their estate according to their rank: and, secondly, in taking off some of the burdens which had been laid on marriage whether compulsory or restrictive, and thereby preventing that shameful market, which had been made in the persons of heirs, and the most sacred things amongst mankind.

There were other provisions made in the Great Charter,

that went deeper than the feudal tenure, and affected the whole body of the civil government. A great part of the king's revenue then consisted in the fines and amercements which were imposed in his courts. A fine was paid there for liberty to commence, or to conclude, a suit. The punishment of offences by fine was discretionary; and this discretionary power had been very much abused. But by Magna Charta things were so ordered, that a delinquent might be punished, but not ruined, by a fine or amercement, because the degree of his offence, and the rank he held, were to be taken into consideration. His freehold, his merchandise, and those instruments by which he obtained his livelihood, were made sacred from such impositions.

A more grand reform was made with regard to the administration of justice. The kings in those days seldom resided long in one place, and their courts followed their persons. This erratic justice must have been productive of infinite inconvenience to the litigants. It was now provided, that civil suits, called *Common Pleas*, should be fixed to some certain place. Thus one branch of jurisdiction was separated from the king's court, and detached from his person. They had not yet come to that maturity of jurisprudence as to think this might be made to extend to criminal law also; and that the latter was an object of still greater importance. But even the former may be considered as a great revolution. A tribunal, a creature of mere law, independent of personal power, was established, and this separation of a king's authority from his person was a matter of vast consequence towards introducing ideas of freedom, and confirming the sacredness and majesty of laws.

But the grand article, and that which cemented all the parts of the fabric of liberty, was this, "that no freeman shall be taken or imprisoned, or disseized, or outlawed, or banished, or in any wise destroyed, but by judgment of his peers."

There is another article of nearly as much consequence as the former, considering the state of the nation at that time, by which it is provided, that the barons shall grant to their tenants the same liberties which they had stipulated for themselves. This prevented the kingdom from degenerating into the worst imaginable government,—a feudal aristocracy. The

English barons were not in the condition of those great princes who had made the French monarchy so low in the preceding century; or like those who reduced the imperial power to a name. They had been brought to moderate bounds by the policy of the first and second Henrys, and were not in a condition to set up for petty sovereigns by an usurpation equally detrimental to the Crown and the people. They were able to act only in confederacy; and this common cause made it necessary to consult the common good, and to study popularity by the equity of their proceedings. This was a very happy circumstance to the growing liberty.

These concessions were so just and reasonable, that, if we except the force, no prince could think himself wronged in making them. But to secure the observance of these articles regulations were made, which, whilst they were regarded, scarcely left a shadow of regal power. And the barons could think of no measures for securing their freedom but such as were inconsistent with monarchy. A council of twenty-five barons was to be chosen by their own body, without any concurrence of the king, in order to hear and determine upon all complaints concerning the breach of the charter; and as these charters extended to almost every part of government, a tribunal of his enemies was set up, who might pass judgment on all his actions. And that force might not be wanting to execute the judgments of this new tribunal, the king agreed to issue his own writs to all persons, to oblige them to take an oath of obedience to the twenty-five barons, who were empowered to distress him by seizure of his lands and castles, and by every possible method, until the grievance complained of was redressed according to their pleasure: his own person and his family were alone exempted from violence.

By these last concessions it must be confessed he was effectually dethroned, and with all the circumstances of indignity which could be imagined. He had refused to govern as a lawful prince, and he saw himself deprived of even his legal authority. He became of no sort of consequence in his kingdom; he was held in universal contempt and derision; he fell into a profound melancholy. It was in vain that he had recourse to the pope, whose power he had found sufficient to reduce but not to support him. The censures of the holy

see, which had been fulminated at his desire, were little regarded by the barons, or even by the clergy, supported in this resistance by the firmness of their archbishop, who acted with great vigour in the cause of the barons, and even delivered into their hands the fortress of Rochester, one of the most important places in the kingdom. After much meditation, the king at last resolved upon a measure of the most extreme kind, extorted by shame, revenge, and despair; but, considering the disposition of the time, much the most effectual that could be chosen. He despatched emissaries into France, into the Low Countries, and Germany, to raise men for his service. He had recourse to the same measures to bring his kingdom to obedience which his predecessor William had used to conquer it. He promised to the adventurers in his quarrel the lands of the rebellious barons; and, it is said, even empowered his agents to make charters of the estates of several particulars. The utmost success attended these negotiations in an age when Europe abounded with a warlike and poor nobility; with younger brothers, for whom there was no provision in regular armies, who seldom entered into the church, and never applied themselves to commerce; and when every considerable family was surrounded by an innumerable multitude of retainers and dependants, idle, and greedy of war and pillage. The crusade had universally diffused a spirit of adventure; and if any adventure had the pope's approbation, it was sure to have a number of followers.

John waited the effect of his measures. He kept up no longer the solemn mockery of a court, in which a degraded king must always have been the lowest object. He retired to the Isle of Wight: his only companions were sailors and fishermen, among whom he became extremely popular. Never was he more to be dreaded than in this sullen retreat, whilst the barons amused themselves by idle jests, and vain conjectures on his conduct. Such was the strange want of foresight in that barbarous age, and such the total neglect of design in their affairs, that the barons, when they had got the charter, which was weakened even by the force by which it was obtained and the great power which it granted, set no watch upon the king; seemed to have no intelligence of the great and open machinations which were carrying on against them, and had made no sort of dispositions for their

defence. They spent their time in tournaments and bear-baitings, and other diversions suited to the fierce rusticity of their manners. At length the storm broke forth, and found them utterly unprovided. The papal excommunication, the indignation of their prince, and a vast army of lawless and bold adventurers, were poured down at once upon their heads. Such numbers were engaged in this enterprise, that forty thousand are said to have perished at sea. Yet a number still remained sufficient to compose two great armies; one of which, with the enraged king at its head, ravaged without mercy the north of England; whilst the other turned all the west to a like scene of blood and desolation. The memory of Stephen's wars was renewed with every image of horror, misery, and crime. The barons, dispersed and trembling in their castles, waited who should fall the next victim. They had no army able to keep the field. The archbishop, on whom they had great reliance, was suspended from his functions. There was no hope even from submission; the king could not fulfil his engagements to his foreign troops at a cheaper rate than the utter ruin of his barons. In these circumstances of despair they resolved to have recourse to Philip, the ancient enemy of their country. Throwing off all allegiance to John, they agreed to accept Lewis, the son of that monarch, as their king. Philip had once more an opportunity of bringing the crown of England into his family, and he readily embraced it. He immediately sent his son into England with seven hundred ships, and slighted the menaces and excommunications of the pope to attain the same object for which he had formerly armed to support and execute them. The affairs of the barons assumed quite a new face by this reinforcement, and their rise was as sudden and striking as their fall. The foreign army of King John, without discipline, pay, or order, ruined and wasted in the midst of its successes, was little able to oppose the natural force of the country, called forth and recruited by so considerable a succour. Besides, the French troops who served under John, and made a great part of his army, immediately went over to the enemy, unwilling to serve against their sovereign in a cause which now began to look desperate. The son of the king of France was acknowledged in London, and received the homage of all ranks of

A. D. 1216.

men. John, thus deserted, had no other ally than the pope, who indeed served him to the utmost of his power; but with arms to which the circumstances of the time alone can give any force. He excommunicated Lewis and his adherents; he laid England under an interdict; he threatened the king of France himself with the same sentence; but Philip continued firm, and the interdict had little effect in England. Cardinal Langton, by his remarkable address, by his interest in the sacred college, and his prudent submissions, had been restored to the exercise of his office; but, steady to the cause he had first espoused, he made use of the recovery of his authority to carry on his old designs against the king and the pope. He celebrated divine service in spite of the interdict; and by his influence and example taught others to despise it. The king, thus deserted, and now only solicitous for his personal safety, rambled, or rather fled, from place to place at the head of a small party. He was in great danger in passing a marsh in Norfolk, in which he lost the greatest part of his baggage and his most valuable effects. With difficulty he escaped to the monastery of Swinestead; where, violently agitated by grief and disappointments, his late fatigue and the use of an improper diet threw him into a fever, of which he died in a few days at Newark, not without suspicion of poison, after a reign, or rather a struggle to reign, for eighteen years, the most turbulent and calamitous both to king and people of any that are recorded in the English history.

It may not be improper to pause here for a few moments, and to consider a little more minutely the causes which had produced the grand revolution in favour of liberty, by which this reign was distinguished; and to draw all the circumstances which led to this remarkable event into a single point of view. Since the death of Edward the Confessor only two princes succeeded to the crown upon undisputed titles. William the Conqueror established his by force of arms. His successors were obliged to court the people by yielding many of the possessions and many of the prerogatives of the Crown; but they supported a dubious title by a vigorous administration; and recovered by their policy in the course of their reign what the necessity of their affairs obliged them to relinquish for the establishment of their power. Thus was the nation kept continually fluctuating

between freedom and servitude. But the principles of freedom were predominant, though the thing itself was not yet fully formed. The continual struggle of the clergy for the ecclesiastical liberties laid open at the same time the natural claims of the people; and the clergy were obliged to show some respect for those claims, in order to add strength to their own party. The concessions which Henry the Second made to the ecclesiastics on the death of Becket, which were afterwards confirmed by Richard the First, gave a grievous blow to the authority of the Crown; as thereby an order of so much power and influence triumphed over it in many essential points. The latter of these princes brought it very low by the whole tenor of his conduct. Always abroad, the royal authority was felt in its full vigour, without being supported by the dignity, or softened by the graciousness, of the royal presence. Always in war, he considered his dominions only as a resource for his armies. The demesnes of the Crown were squandered. Every office in the state was made vile by being sold. Excessive grants, followed by violent and arbitrary resumptions, tore to pieces the whole contexture of the government. The civil tumults which arose in that king's absence showed that the king's lieutenants at least might be disobeyed with impunity.

Then came John to the Crown. The arbitrary taxes which he imposed very early in his reign, which offended even more by the improper use made of them than their irregularity, irritated the people extremely, and joined with all the preceding causes to make his government contemptible. Henry the Second, during his contests with the church, had the address to preserve the barons in his interests. Afterwards, when the barons had joined in the rebellion of his children, this wise prince found means to secure the bishops and ecclesiastics. But John drew upon himself at once the hatred of all orders of his subjects. His struggle with the pope weakened him; his submission to the pope weakened him yet more. The loss of his foreign territories, besides what he lost along with them in reputation, made him entirely dependent upon England; whereas his predecessors made one part of their territories subservient to the preservation of their authority in another, where it was endangered. Add to all these causes the personal character of the king, in which there was nothing

uniform or sincere, and which introduced the like unsteadiness into all his government. He was indolent, yet restless, in his disposition; fond of working by violent methods, without any vigour; boastful, but continually betraying his fears; showing, on all occasions, such a desire of peace as hindered him from ever enjoying it. Having no spirit of order, he never looked forward; content by any temporary expedient to extricate himself from a present difficulty. Rash, arrogant, perfidious, irreligious, unquiet, he made a tolerable head of a party, but a bad king; and had talents fit to disturb another's government, not to support his own. A most striking contrast presents itself between the conduct and fortune of John and his adversary Philip. Philip came to the Crown when many of the provinces of France, by being in the hands of too powerful vassals, were in a manner dismembered from the kingdom; the royal authority was very low in what remained. He reunited to the Crown a country as valuable as what belonged to it before; he reduced his subjects of all orders to a stricter obedience than they had given to his predecessors. He withstood the papal usurpation, and yet used it as an instrument in his designs; whilst John, who inherited a great territory, and an entire prerogative, by his vices and weakness gave up his independency to the pope, his prerogative to his subjects, and a large part of his dominions to the king of France.

CHAPTER IX.

FRAGMENT.—AN ESSAY TOWARDS A HISTORY OF THE LAWS OF ENGLAND.

THERE is scarce any object of curiosity more rational, than the origin, the progress, and the various revolutions of human laws. Political and military relations are for the greater part accounts of the ambition and violence of mankind; this is a history of their justice. And surely there cannot be a more pleasing speculation than to trace the advances of men in an attempt to imitate the Supreme Ruler in one of the most glorious of his attributes; and to attend them in the exercise of a prerogative which it is wonderful to find in-

trusted to the management of so weak a being. In such an inquiry we shall indeed frequently see great instances of this frailty; but at the same time we shall behold such noble efforts of wisdom and equity, as seem fully to justify the reasonableness of that extraordinary disposition, by which men, in one form or other, have been always put under the dominion of creatures like themselves. For what can be more instructive than to search out the first obscure and scanty fountains of that jurisprudence, which now waters and enriches whole nations with so abundant and copious a flood:—to observe the first principles of RIGHT springing up, involved in superstition, and polluted with violence; until by length of time, and favourable circumstances, it has worked itself into clearness:—the laws, sometimes lost and trodden down in the confusion of wars and tumults, and sometimes overruled by the hand of power; then victorious over tyranny, growing stronger, clearer, and more decisive by the violence they had suffered; enriched even by those foreign conquests which threatened their entire destruction; softened and mellowed by peace and religion, improved and exalted by commerce, by social intercourse, and that great opener of the mind, ingenuous science?

These certainly were great encouragements to the study of historical jurisprudence, particularly of our own. Nor was there a want of materials, or help, for such an undertaking. Yet we have had few attempts in that province. Lord Chief Justice Hale's History of the Common Law is, I think, the only one, good or bad, which we have. But with all the deference justly due to so great a name, we may venture to assert, that this performance, though not without merit, is wholly unworthy of the high reputation of its author. The sources of our English law are not well, nor indeed fairly, laid open; the ancient judicial proceedings are touched in a very slight and transient manner; and the great changes and remarkable revolutions in the law, together with their causes, down to his time, are scarcely mentioned.

Of this defect I think there were two principal causes; the first, a persuasion hardly to be eradicated from the minds of our lawyers, that the English law has continued

very much in the same state from an antiquity to which they will allow hardly any sort of bounds. The second is, that it was formed and grew up among ourselves; that it is in every respect peculiar to this island; and that if the Roman or any foreign laws attempted to intrude into its composition, it has always had vigour enough to shake them off, and return to the purity of its primitive constitution.

These opinions are flattering to national vanity and professional narrowness. And though they involved those that supported them in the most glaring contradictions, and some absurdities even too ridiculous to mention, we have always been, and in a great measure still are, extremely tenacious of them. If these principles are admitted, the history of the law must in a great measure be deemed superfluous. For to what purpose is a history of a law, of which it is impossible to trace the beginning, and which, during its continuance, has admitted no essential changes? Or why should we search foreign laws, or histories, for explanation or ornament of that which is wholly our own; and by which we are effectually distinguished from all other countries? Thus the law has been confined, and drawn up into a narrow and inglorious study; and that which should be the leading science in every well-ordered commonwealth, remained in all the barbarism of the rudest times, whilst every other advanced by rapid steps to the highest improvement both in solidity and elegance; insomuch that the study of our jurisprudence presented to liberal and well-educated minds, even in the best authors, hardly anything but barbarous terms, ill explained; a coarse but not a plain expression, an indigested method, and a species of reasoning, the very refuse of the schools; which deduced the spirit of the law, not from original justice or legal conformity, but from causes foreign to it, and altogether whimsical. Young men were sent away with an incurable, and, if we regard the manner of handling rather than the substance, a very well founded, disgust. The famous antiquary Spelman, though no man was better formed for the most laborious pursuits, in the beginning deserted the study of the law in despair, though he returned to it again when a more confirmed age, and a strong desire of knowledge, enabled him to wrestle with every difficulty.

The opinions which have drawn the law into such narrow-

ness, as they are weakly founded, so they are very easily refuted. With regard to that species of eternity which they attribute to the English law, to say nothing of the manifest contradictions in which those involve themselves who praise it for the frequent improvements it has received, and at the same time value it for having remained without any change in all the revolutions of government; it is obvious, on the very first view of the Saxon laws, that we have entirely altered the whole frame of our jurisprudence since the Conquest. Hardly can we find in these old collections a single title, which is law at this day; and one may venture to assert without much hazard, that if there were at present a nation governed by the Saxon laws, we should find it difficult to point out another so entirely different from everything we now see established in England.

This is a truth which requires less sagacity than candour to discover. The spirit of party, which has misled us in so many other particulars, has tended greatly to perplex us in this matter. For as the advocates for prerogative would, by a very absurd consequence drawn from the Norman conquest, have made all our national rights and liberties to have arisen from the grants, and therefore to be revocable at the will, of the sovereign, so, on the other hand, those who maintained the cause of liberty did not support it upon more solid principles. They would hear of no beginning to any of our privileges, orders, or laws; and, in order to gain them a reverence, would prove that they were as old as the nation; and to support that opinion they put to the torture all the ancient monuments. Others, pushing things further, have offered a still greater violence to them. N. Bacon, in order to establish his republican system, has so distorted all the evidence he has produced, concealed so many things of consequence, and thrown such false colours upon the whole argument, that I know no book so likely to mislead the reader in our antiquities, if yet it retains any authority. In reality, that ancient constitution, and those Saxon laws, made little or nothing for any of our modern parties; and when fairly laid open will be found to compose such a system, as none, I believe, would think it either practicable or desirable to establish. I am sensible, that nothing has been a larger theme of panegyric with all our writers on politics and history, than

the Anglo-Saxon government; and it is impossible not to conceive a high opinion of its laws, if we rather consider what is said of them than what they visibly are. These monuments of our pristine rudeness still subsist; and they stand out of themselves indisputable evidence to confute the popular declamations of those writers, who would persuade us that the crude institutions of an unlettered people had reached a perfection, which the united efforts of inquiry, experience, learning, and necessity, have not been able to attain in many ages.

But the truth is, the present system of our laws, like our language and our learning, is a very mixed and heterogeneous mass; in some respects our own; in more borrowed from the policy of foreign nations, and compounded, altered, and variously modified, according to the various necessities, which the manners, the religion, and the commerce of the people have at different times imposed. It is our business, in some measure, to follow and point out these changes and improvements; a task we undertake, not from any ability for the greatness of such a work, but purely to give some short and plain account of these matters to the very ignorant.

The law of the Romans seems utterly to have expired in this island together with their empire, and that, too, before the Saxon establishment. The Anglo-Saxons came into England as conquerors. They brought their own customs with them; and doubtless did not take laws from, but imposed theirs upon, the people they had vanquished. These customs of the conquering nation were without question the same, for the greater part, they had observed before their migration from Germany. The best image we have of them is to be found in Tacitus. But there is reason to believe that some changes were made suitable to the circumstances of their new settlement, and to the change their constitution must have undergone by adopting a kingly government, not indeed with unlimited sway, but certainly with greater powers than their leaders possessed whilst they continued in Germany. However, we know very little of what was done in these respects until their conversion to Christianity, a revolution which made still more essential changes in their manners and government. For immediately after the conversion of Ethelbert, king of Kent, the missionaries, who had

introduced the use of letters, and came from Rome full of the ideas of the Roman civil establishment, must have observed the gross defect arising from a want of written and permanent laws. The king,[1] from their report of the Roman method, and in imitation of it, first digested the most material customs of this kingdom into writing, without having adopted anything from the Roman law, and only adding some regulations for the support and encouragement of the new religion. These laws still exist, and strongly mark the extreme simplicity of manners, and poverty of conception, of the legislators. They are written in the English of that time; and indeed all the laws of the Anglo-Saxons continued in that language down to the Norman Conquest. This was different from the method of the other northern nations, who made use only of the Latin language in all their codes. And I take the difference to have arisen from this: at the time when the Visigoths, the Lombards, the Franks, and the other northern nations on the continent compiled their laws, the provincial Romans were very numerous amongst them, or indeed composed the body of the people. The Latin language was yet far from extinguished; so that as the greatest part of those who could write were Romans, they found it difficult to adapt their characters to these rough northern tongues, and therefore chose to write in Latin; which, though not the language of the legislator, could not be very incommodious, as they could never fail of interpreters; and for this reason not only their laws, but all their ordinary transactions, were written in that language. But in England, the Roman name and language having entirely vanished in the 7th century, the missionary monks were obliged to contend with the difficulty, and to adapt foreign characters to the English language; else none but a very few could possibly have drawn any advantage from the things they meant to record. And to this it was owing that many, even the ecclesiastical, constitutions, and not a few of the ordinary evidences of the land, were written in the language of the country.

This example of written laws being given by Ethelbert, it was followed by his successors Edric and Lothaire. The

[1] *Decreta illa judiciorum juxta exemplar Romanorum cum consilio sapientum constituit* Beda, Eccl. Hist. lib. ii. c. 5.

next legislator amongst the English was Ina, king of the West Saxons, a prince famous in his time for his wisdom and his piety. His laws, as well as those of the above-mentioned princes, still subsist. But we must always remember, that very few of these laws contained any new regulation, but were rather designed to affirm their ancient customs, and to preserve and fix them; and accordingly they are all extremely rude and imperfect. We read of a collection of laws by Offa, king of the Mercians; but they have been long since lost.

The Anglo-Saxon laws, by univeral consent of all writers, owe more to the care and sagacity of Alfred than of any of the ancient kings. In the midst of a cruel war, of which he did not see the beginning, nor live to see the end, he did more for the establishment of order and justice than any other prince has been known to do in the profoundest peace. Many of the institutions attributed to him undoubtedly were not of his establishment; this shall be shown when we come to treat more minutely of the institutions. But it is clear that he raised, as it were, from the ashes, and put new life and vigour into, the whole body of the law, almost lost and forgotten in the ravages of the Danish war; so that having revived, and in all likelihood improved, several ancient national regulations, he has passed for their author, with a reputation perhaps more just than if he had invented them. In the prologue which he wrote to his own code, he informs us, that he collected there whatever appeared to him most valuable in the laws of Ina and Offa, and others of his progenitors, omitting what he thought wrong in itself, or not adapted to the time: and he seems to have done this with no small judgment.

The princes who succeeded him, having by his labours enjoyed more repose, turned their minds to the improvement of the law; and there are few of them who have not left us some collection more or less complete.

When the Danes had established their empire, they showed themselves no less solicitous than the English to collect and enforce the laws; seeming desirous to repair all the injuries they had formerly committed against them. The code of Canute the Great is one of the most moderate, equitable, and full of any of the old collections. There was no material change, if any at all, made in their general system by the

Danish conquest. They were of the original country of the Saxons, and could not have differed from them in the groundwork of their policy. It appears by the league between Alfred and Guthrum, that the Danes took their laws from the English, and accepted them as a favour. They were more newly come out of the northern barbarism, and wanted the regulations necessary to a civil society. But under Canute the English law received considerable improvement. Many of the old English customs, which, as that monarch justly observes, were truly odious, were abrogated; and indeed that code is the last we have, that belongs to the period before the Conquest. That monument, called the laws of Edward the Confessor, is certainly of a much later date. And what is extraordinary, though the historians after the Conquest continually speak of the laws of King Edward, it does not appear that he ever made a collection, or that any such laws existed at that time. It appears by the preface to the laws of St. Edward, that these written constitutions were continually falling into disuse. Although these laws had undoubtedly their authority, it was, notwithstanding, by traditionary customs that the people were for the most part governed; which, as they varied somewhat in different provinces, were distinguished accordingly by the names of the West Saxon, the Mercian, and the Danish law; but this produced no very remarkable inconvenience, as those customs seemed to differ from each other, and from the written laws, rather in the quantity and nature of their pecuniary mulcts, than in anything essential.

If we take a review of these ancient constitutions, we shall observe, that their sanctions are mostly confined to the following objects:—

1st, The preservation of the peace. This is one of the largest titles: and it shows the ancient Saxons to have been a people extremely prone to quarrelling and violence. In some cases the law ventures only to put this disposition under regulations;[1] prescribing that no man shall fight with another until he has first called him to justice in a legal way; and then lays down the terms, under which he may proceed to hostilities. The other less premeditated quarrels, in meetings for drinking, or business, were considered as more or

[1] Leg. Alfred. 38, de pugnâ.

less heinous, according to the rank of the person in whose house the dispute happened; or, to speak the language of that time, whose peace they had violated.

2nd, In proportioning the pecuniary mulcts imposed by them for all, even the highest, crimes, according to the dignity of the person injured, and to the quantity of the offence. For this purpose they classed the people with great regularity and exactness, both in the ecclesiastic and the secular lines; adjusting with great care the ecclesiastical to the secular dignities; and they not only estimated each man's life according to his quality, but they set a value upon every limb and member, down even to teeth, hair, and nails; and these are the particulars in which their laws are most accurate and best defined.

3rd, In settling the rules and ceremonies of their oaths, their purgations, and the whole order and process of their superstitious justice; for by these methods they seem to have decided all controversies.

4th, In regulating the several fraternities of Frankpledges, by which all the people were naturally bound to their good behaviour to one another, and to their superiors; in all which they were excessively strict, in order to supply by the severity of this police the extreme laxity and imperfection of their laws, and the weak and precarious authority of their kings and magistrates.

These, with some regulations for payment of tithes and church-dues, and for the discovery and pursuit of stealers of cattle, comprise almost all the titles deserving notice in the Saxon laws. In those laws there are frequently to be observed particular institutions, well and prudently framed; but there is no appearance of a regular, consistent, and stable jurisprudence. However, it is pleasing to observe something of equity and distinction gradually insinuating itself into these unformed materials; and some transient flashes of light striking across the gloom, which prepared for the full day that shone out afterwards. The clergy, who kept up a constant communication with Rome, and were in effect the Saxon legislators, could not avoid gathering some information from a law which never was perfectly extinguished in that part of the world. Accordingly we find one of its principles had strayed hither so early as the time of Edric

and Lothaire.[1] There are two maxims[2] of civil law in their proper terms in the code of Canute the Great, who made and authorized that collection after his pilgrimage to Rome; and at this time, it is remarkable, we find the institutions of other nations imitated. In the same collection there is an express reference to the laws of the Werini. From hence it is plain, that the resemblance between the polity of the several northern nations did not only arise from their common original, but also from their adopting, in some cases, the constitutions of those amongst them who were most remarkable for their wisdom.

In this state the law continued until the Norman Conquest. But we see that even before that period the English law began to be improved by taking in foreign learning; we see the canons of several councils mixed indiscriminately with the civil constitutions; and indeed the greatest part of the reasoning and equity to be found in them seems to be derived from that source.

Hitherto we have observed the progress of the Saxon laws, which, conformably to their manners, were rude and simple; agreeably to their confined situation, very narrow; and though in some degree, yet not very considerably, improved by foreign communication. However, we can plainly discern its three capital sources:—first, the ancient traditionary customs of the North, which, coming upon this and the other civilized parts of Europe with the impetuosity of a conquest, bore down all the ancient establishments; and by being suited to the genius of the people, formed, as it were, the great body and main stream of the Saxon laws.

The second source was the canons of the church. As yet, indeed, they were not reduced into system and a regular form of jurisprudence; but they were the law of the clergy, and consequently influenced considerably a people over whom that order had an almost unbounded authority. They corrected, mitigated, and enriched those rough northern institutions; and the clergy having once bent the stubborn necks of that people to the yoke of religion, they were the more easily susceptible of other changes introduced under the same sanction.

[1] *Justum est ut proles matrem sequatur.* Edric et Lothair.

[2] *Negatio potior est affirmatione. Possessio proprior est habenti quàm desinceps repetenti.* L. Canut.

These formed the third source; namely, some parts of the Roman civil law, and the customs of other German nations. But this source appears to have been much the smallest of the three, and was yet inconsiderable.

The Norman Conquest is the great era of our laws. At this time the English jurisprudence, which had hitherto continued a poor stream, fed from some few, and those scanty, sources, was all at once, as from a mighty flood, replenished with a vast body of foreign learning, by which indeed it might be said rather to have been increased than much improved; for this foreign law being imposed, not adopted, for a long time bore strong appearances of that violence by which it had been first introduced. All our monuments bear a strong evidence to this change. New courts of justice, new names, and powers of officers, in a word, a new tenure of land, as well as new possessors of it, took place. Even the language of public proceedings was in a great measure changed.

[The following Parliamentary Report was elicited by circumstances connected with the proceedings of the Hastings Trial, though in no way affecting the proceedings of the trial itself. It forms a permanently valuable *historical* document, for the guidance of Parliament in all cases of a similar kind. It is justly considered one of the ablest state-papers ever drawn up. Its title will explain its nature.]

REPORT,

Made on the 30th of April, 1794, from the Committee of the House of Commons, appointed to inspect the Lords' Journals, in relation to their Proceedings on the Trial of Warren Hastings, Esquire, and to report what they find therein to the House (which Committee were the Managers appointed to make good the Articles of Impeachment against the said Warren Hastings, Esquire); and who were afterwards instructed to report the several Matters which have occurred since the commencement of the said Prosecution, and which have, in their Opinion, contributed to the duration thereof to the present time, with their Observations thereupon.

Your committee has received two powers from the House —The first on the 5th of March, 1794, to inspect the Lords' Journals, in relation to their proceedings on the Trial of Warren Hastings, Esquire, and to report what they find therein to the House. The second is an instruction given on the 17th day of the same month of March, to this effect: That your committee do report to this House the several matters which have occurred since the commencement of the said prosecution, and which have, in their opinion, contributed to the duration thereof to the present time, with their observations thereupon.

Your committee is sensible that the duration of the said trial, and the causes of that duration, as well as the matters which have therein occurred, do well merit the attentive consideration of this House; we have therefore endeavoured, with all diligence, to employ the powers that have been granted, and to execute the orders that have been given to us, and to report thereon as speedily as possible, and as fully as the time would admit.

Your committee has considered, first, the mere fact of the duration of the trial, which they find to have commenced on the 13th day of February, 1788, and to have continued, by various adjournments, to the said 17th of March.—During that period the sittings of the court have occupied one hundred and eighteen days, or about one-third of a year.—The distribution of the sitting days in each year is as follows:

	Days
In the year 1788, the court sat . . .	35
1789, ...	17
1790, ...	14
1791, ...	5
1792, ...	22
1793, ...	22
1794, to the 1st of March, inclusive	3
Total .	118

Your committee then proceeded to consider the causes of this duration, with regard to time, as measured by the calendar, and also as measured by the number of days occupied in actual sitting. They find, on examining the duration of the trial, with reference to the number of years which it has lasted, that it has been owing to several prorogations, and to one dissolution, of parliament; to discussions which are supposed to have arisen in the House of Peers, on the legality of the continuance of impeachments from parliament to parliament; that it has been owing to the number and length of the adjournments of the court; particularly the adjournments on account of the circuit, which adjournments were interposed in the middle of the session, and the most proper time for business; that it has been owing to one adjournment, made in consequence of a complaint of the pri-

soner against one of your managers, which took up a space of ten days; that two days adjournments were made on account of the illness of certain of the managers; and, as far as your committee can judge, two sitting days were prevented by the sudden and unexpected dereliction of the defence of the prisoner at the close of the last session, your managers not having been then ready to produce their evidence in reply, nor to make their observations on the evidence produced by the prisoner's counsel; as they expected the whole to have been gone through before they were called on for their reply. In this session, your committee computes that the trial was delayed about a week or ten days. The Lords waited for the recovery of the Marquis Cornwallis, the prisoner wishing to avail himself of the testimony of that noble person.

With regard to the 118 days employed in actual sitting, the distribution of the business was in the manner following:—There were spent,

	Days
In reading the articles of Impeachment, and the defendant's answer, and in debate on the mode of proceeding	3
Opening speeches, and summing up by the managers	19
Documentary and oral evidence by the managers	51
Opening speeches and summing up by the defendant's counsel and defendant's addresses to the court	22
Documentary and oral evidence on the part of the defendant	23
	118

The other head, namely, that the trial has occupied 118 days, or nearly one-third of a year:—This your committee conceives to have arisen from the following immediate causes: first, The nature and extent of the matter to be tried:—secondly, The general nature and quality of the evidence produced; it was principally documentary evidence, contained in papers of great length, the whole of which was often required to be read, when brought to prove a single short fact; or it was oral evidence, in which must be taken into

consideration the number and description of the witnesses examined and cross-examined:—thirdly, and principally, The duration of the trial is to be attributed to objections taken by the prisoner's counsel to the admissibility of several documents and persons offered as evidence on the part of the prosecution. These objections amounted to sixty-two: they gave rise to several debates, and to twelve references from the court to the judges.—On the part of the managers, the number of objections was small; the debates upon them were short; there was not upon them any reference to the judges; and the lords did not even retire upon any of them to the chamber of parliament.

This last cause of the number of sitting days your committee considers as far more important than all the rest. The questions upon the admissibility of evidence; the manner in which these questions were stated and were decided; the modes of proceeding; the great uncertainty of the principle upon which evidence in that court is to be admitted or rejected: all these appear to your committee materially to affect the constitution of the House of Peers as a court of judicature, as well as its powers, and the purposes it was intended to answer in the state. The Peers have a valuable interest in the conservation of their own lawful privileges: but this interest is not confined to the Lords. The Commons ought to partake in the advantage of the judicial rights and privileges of that high court. Courts are made for the suitors, and not the suitors for the court. The conservation of all other parts of the law, the whole indeed of the rights and liberties of the subject, ultimately depends upon the preservation of the law of parliament in its original force and authority.

Your committee had reason to entertain apprehensions, that certain proceedings in this trial may possibly limit and weaken the means of carrying on any future impeachment of the Commons. As your committee felt these apprehensions strongly, they thought it their duty to begin with humbly submitting facts and observations, on the proceedings concerning evidence, to the consideration of this House, before they proceed to state the other matters which come within the scope of the directions which they have received.

To enable your committee the better to execute the task

imposed upon them, in carrying on the impeachment of this House, and to find some principle on which they were to order and regulate their conduct therein, they found it necessary to look attentively to the jurisdiction of the court in which they were to act for this House, and into its laws and rules of proceeding, as well as into the rights and powers of the House of Commons in their impeachments.

RELATION OF THE JUDGES, &c. TO THE COURT OF PARLIAMENT.

Upon examining into the course of proceeding in the House of Lords, and into the relation which exists between the Peers on the one hand and their attendants and assistants,—the judges of the realm, barons of the Exchequer of the Coif, the king's learned counsel, and the civilians masters of the Chancery, on the other; it appears to your committee, that these judges, and other persons learned in the common and civil laws, are no integrant and necessary part of that court. Their writs of summons are essentially different; and it does not appear that they or any of them have or of right ought to have a deliberative voice, either actually or virtually, in the judgments given in the high court of parliament. Their attendance in that court is solely ministerial; and their answers to questions put to them are not to be regarded as declaratory of the law of parliament, but are merely consultory responses, in order to furnish such matter (to be submitted to the judgment of the Peers) as may be useful in reasoning by analogy, so far as the nature of the rules, in the respective courts of the learned persons consulted, shall appear to the House to be applicable to the nature and circumstance of the case before them, and no otherwise. Inst. 4. p. 4.

JURISDICTION OF THE LORDS.

Your committee finds, That in all impeachments of the Commons of Great Britain for high crimes and misdemeanours before the Peers in the high court of parliament, the Peers are not triers or jurors only, but by the ancient laws and constitution of this kingdom, known by constant usage, are judges both of law and fact; and we conceive that the Lords are bound not to act in such a manner as to give rise to

an opinion that they have virtually submitted to a division of their legal powers; or that, putting themselves into the situation of mere triers or jurors, they may suffer the evidence in the cause to be produced or not produced before them, according to the discretion of the judges of the inferior courts.

LAW OF PARLIAMENT.

Your committee finds, that the Lords, in matter of appeal or impeachment in parliament, are not of right obliged to proceed according to the course or rules of the Roman civil law, or by those of the law or usage of any of the inferior courts in Westminster Hall; but by the law and usage of parliament. And your committee finds, that this has been declared in the most clear and explicit manner by the House of Lords, in the year of our Lord 1387 and 1388, in the 11th year of King Richard the Second.

Upon an appeal in parliament, then depending, against certain great persons, peers and commoners, the said appeal was referred to the justices and other learned persons of the law; "At which time" (it is said in the record) "that the justices and serjeants, and others the learned in the law civil, were charged, by order of the king our sovereign aforesaid, to give their faithful counsel to the Lords of the parliament, concerning the due proceedings in the cause of the appeal aforesaid. The which justices, serjeants, and the learned in the law of the kingdom, and also the learned in the law civil, have taken the same into deliberation; and have answered to the said Lords of parliament, that they had seen and well considered the tenor of the said appeal; and they say, that the same appeal was neither made nor pleaded according to the order which the one law or the other requires. Upon which the said Lords of parliament have taken the same into deliberation and consultation, and by the assent of our said lord the king, and of their common agreement, it was declared, that in so high a crime as that which is charged in this appeal, which touches the person of our lord the king, and the state of the whole kingdom, perpetrated by persons who are peers of the kingdom, along with others, the cause shall not be tried in any other place but in parliament, nor by any other law than the law and course of parliament; and that it belongeth to

Rolls Parl. vol. iii. p. 236.

the Lords of parliament, and to their franchise and liberty by the ancient custom of the parliament, to be judges in such cases; and in these cases to judge by the assent of the king; and thus it shall be done in this case, by the award of parliament: because the realm of England has not been heretofore, nor is it the intention of our said lord the king, and the Lords of parliament, that it ever should be, governed by the law civil; and also, it is their resolution, not to rule or govern so high a cause as this appeal is, which cannot be tried anywhere but in parliament, as hath been said before, by the course, process, and order used in any courts or place inferior, in the same kingdom; which courts and places are not more than the executors of the ancient laws and customs of the kingdom, and of the ordinances and establishments of parliament. It was determined by the said Lords of parliament, by the assent of our said lord the king, that this appeal was made and pleaded well and sufficiently, and that the process upon it is good and effectual, according to the law and course of parliament, and for such they decree and adjudge it."

And your committee finds, that toward the close of the same parliament, the same right was again claimed and admitted as the special privilege of the peers, in the following manner:—" In this parliament, all the Lords then present, spiritual as well as temporal, claimed as their franchise that the weighty matters moved in this parliament, and which shall be moved in other parliaments in future times, touching the peers of the land, shall be managed, adjudged, and discussed by the course of parliament, and in no sort by the law civil, or by the common law of the land, used in the other lower courts of the kingdom, which claim, liberty, and franchise, the king graciously allowed and granted to them in full parliament." Rolls Parl. vol. iii. p. 244, § 7.

Your committee finds, that the Commons, having at that time considered the appeal above-mentioned, approved the proceedings in it; and, as far as in them lay, added the sanction of their accusation against the persons who were the objects of the appeal. They also, immediately afterwards, impeached all the judges of the Common Pleas, the chief barons of the Exchequer, and other learned and eminent persons, both peers and commoners; upon the conclusion of which

impeachments it was that the second claim was entered. In all the transactions aforesaid, the Commons were acting parties: yet neither then, nor ever since, have they made any objection or protestation that the rule laid down by the Lords, in the beginning of the session of 1388, ought not to be applied to the impeachments of commoners as well as peers. In many cases they have claimed the benefit of this rule; and in all cases they have acted, and the peers have determined, upon the same general principles. The Peers have always supported the same franchises; nor are there any precedents upon the records of parliament subverting either the general rule or the particular privilege; so far as the same relates either to the course of proceeding or to the rule of law, by which the Lords are to judge.

Your committee observes also, that in the commissions to the several lords high stewards who have been appointed on the trials of peers impeached by the Commons, the proceedings are directed to be had according to the law and custom of the kingdom, *and the custom of parliament:* which words are not to be found in the commissions for trying upon indictments.

4 Inst. p. 15. "As every court of justice" (says Lord Coke) "hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, &c., so the high court of parliament, *suis propriis legibus et consuetudinibus subsistit.* It is by the Lex et Consuetudo Parliamenti that all weighty matters in any parliament moved, concerning the Peers of the realm, or Commons in parliament assembled, ought to be determined, adjudged, and discussed by the course of the parliament, and not by the civil law, nor yet by the common laws of this realm used in more inferior courts."—And after founding himself on this very precedent of the 11th of Richard II., he adds, "*This is the reason that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but secundum legem et consuetudinem parliamenti: and so the judges in divers parliaments have confessed.*"

RULE OF PLEADING.

Your committee do not find that any rules of pleading, as observed in the inferior courts, have ever obtained in the proceedings of the high court of parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your committee find that any demurrer or exception, as of false or erroneous pleading, hath been ever admitted to any impeachment in parliament, as not coming within the form of the pleading; and although a reservation or protest is made by the defendant (matter of form, as we conceive) "to the generality, uncertainty, and insufficiency of the articles of impeachment;" yet no objections have in fact ever been made in any part of the record; and when verbally they have been made, (until this trial,) they have constantly been overruled.

The trial of Lord Strafford is one of the most important eras in the history of parliamentary judicature. In that trial, and in the dispositions made preparatory to it, the process of impeachments was, on great consideration, research, and selection of precedents, brought very nearly to the form which it retains at this day; and great and important parts of parliamentary law were then laid down. The Commons at that time made new charges, or amended the old, as they saw occasion. Upon an application from the Commons to the Lords, that the examinations taken by their lordships, at their request, might be delivered to them, for the purpose of a more exact specification of the charge they had made, on delivering the message of the Commons, Mr. Pim, amongst other things, said, as it is entered in the Lords' Journals, "According to the clause of reservation in the conclusion of their charge, they (the Commons) will add to the charges, not to the matter in respect of comprehension, extent, or kind, but only to reduce them to more particularities, that the Earl of Strafford might answer with the more clearness and expedition —not *that they are bound by this way of SPECIAL charge; and therefore they have taken care in their House, upon protestation, that this shall be no prejudice to bind them from proceeding in GENERAL in other cases, and that they are not to be ruled by proceedings in other courts, which protesta-*

16 Ch. I. 1640.

Lords' Journ. vol. iv. p. 133.

tion they have made for the preservation of the power of parliament; and they desire that the like care may be had in your lordships' House." This protestation is entered on the Lords' Journals. Thus careful were the Commons that no exactness used by them for a temporary accommodation should become an example derogatory to the larger rights of parliamentary process.

Lords' Journ. vol. xix. p. 98. At length the question of their being obliged to conform to any of the rules below came to a formal judgment. In the trial of Dr. Sacheverell, March 10th, 1709, the Lord Nottingham "desired their lordships' opinion, whether he might propose a question to the judges *here* [in Westminster Hall]. Thereupon the Lords being moved to adjourn, adjourned to the House of Lords, and on debate [as appears by a note] it was agreed that the question should be proposed in Westminster Hall." Accordingly, when the Lords returned the same day into the Hall, the question was put by Lord Nottingham, and stated to the judges by the lord chancellor: "Whether by the *law of England*, and constant practice in all prosecutions by *indictment and information*, for crimes and misdemeanours, by writing or speaking, the particular words supposed to be written or spoken must not be expressly specified in the indictment or information?" On this question the judges, *seriatim*, and in open court, delivered their opinion: the substance of which was, "That by the laws of England, and the constant practice in Westminster Hall, the words ought to be expressly specified in the indictment or information." Then the Lords adjourned, and did not come into the Hall until the 20th. In the intermediate time they came to resolutions on the matter of the questions put to the judges. Dr. Sacheverell, being found guilty, moved in arrest of judgment upon two points:—The first, which he grounded on the opinion of the judges, and which your committee thinks most to the present purpose, was, "That no entire clause, or sentence, or expression, in either of his sermons or dedications, is particularly set forth in his impeachment, which he has already heard the judges declare to be necessary in all cases of indictments or informations." On this head of objection, the lord chancellor, on the 23rd of March, agreeably to the resolutions of the Lords of the 14th and 16th of March, ac-

Lords' Journ. vol. xix. p. 116.

quainted Dr. Sacheverell: "That on occasion of the question before put to the judges *in Westminster Hall*, and their answer thereto, their lordships had fully debated and considered of that matter, and had come to the following resolution: 'That this House will proceed to the determination of the impeachment of Dr. Henry Sacheverell, according to the *law of the land, and the law and usage of parliament.*' And afterwards to this resolution: 'That by the *law and usage of parliament* in prosecutions for high crimes and misdemeanours, by writing or speaking, the particular words, supposed to be criminal, are *not necessary* to be expressly specified in such impeachment.' So that, in their lordships' opinion, the law and usage of the high court of parliament being a *part of the law of the land*, and that usage not requiring that words should be exactly specified in impeachments, the answer of the judges, which related only to the course of *indictments and informations*, does not in the least affect your case." Lords' Journ. vol. xix. p. 121.

On this solemn judgment concerning the law and usage of parliament, it is to be remarked; First, That the impeachment itself is not to be presumed inartificially drawn. It appears to have been the work of some of the greatest lawyers of the time, who were perfectly versed in the manner of pleading in the courts below; and would naturally have imitated their course, if they had not been justly fearful of setting an example, which might hereafter subject the plainness and simplicity of a parliamentary proceeding to the technical subtilties of the inferior courts: Secondly, That the question put to the judges, and their answer, were strictly confined to the law and practice below; and that nothing in either had a tendency to their delivering an opinion concerning parliament, its laws, its usages, its course of proceeding, or its powers: Thirdly, That the motion in arrest of judgment, grounded on the opinion of the judges, was made only by Dr. Sacheverell himself, and not by his counsel, men of great skill and learning, who, if they thought the objections had any weight, would undoubtedly have made and argued them.

Here, as in the case of the 11th King Richard the Second, the judges declared unanimously, That such an objection would be fatal to such a pleading in any indictment or in-

formation: but the Lords, as on the former occasion, overruled this objection, and held the article to be good and valid, notwithstanding the report of the judges concerning the mode of proceeding in the courts below.

Lords' Journ. vol. xix. p. 106. Your committee finds, that a protest, with reasons at large, was entered by several Lords against this determination of their court. It is always an advantage to those who protest, that their reasons appear upon record; whilst the reasons of the majority who determine the question do not appear. This would be a disadvantage of such importance, as greatly to impair, if not totally to destroy, the effort of precedent as authority, if the reasons which prevailed were not justly presumed to be more valid than those which have been obliged to give way; the former having governed the final and conclusive decision of a competent court. But your committee, combining the fact of this decision with the early decision just quoted, and with the total absence of any precedent of an objection, before that time or since, allowed to pleading, or what has any relation to the rules and principles of pleading as used in Westminster Hall, has no doubt that the House of Lords was governed in the 9th of Anne by the very same principles which it had solemnly declared in the 11th of Richard the Second.

But besides the presumption in favour of the reasons which must be supposed to have produced this solemn judgment of the Peers, contrary to the practice of the courts below, as declared by all the judges—it is probable, that the Lords were unwilling to take a step which might admit that anything in that practice should be received as their rule. It must be observed, however, that the reasons against the article, alleged in the protest, were by no means solely bottomed in the practice of the courts below, as if the main reliance of the protesters was upon that usage. The protesting minority maintained, that it was not agreeable to *several precedents in parliament;* of which they cited many in favour of their opinion.—It appears by the Journals, that the clerks were ordered to search for precedents, and a committee of Peers was appointed to inspect the said precedents, and to report upon them,—and that they did inspect and report accordingly. But the Report is not entered on the

Journals. It is, however, to be presumed that the greater number and the better precedents supported the judgment. Allowing, however, their utmost force to the precedents there cited, they could serve only to prove, that in the *case of words* (to which alone, and not the case of a *written* libel, the precedents extended) such a special averment, according to the tenor of the words, had been used; but not that it was necessary, or that ever any plea had been rejected upon such an objection. As to the course of parliament, resorted to for authority in this part of the protest, the argument seems rather to affirm than to deny the general proposition, that its own course, and not that of the inferior courts, had been the rule and law of parliament.

As to the objection taken in the protest, drawn from natural right, the Lords knew, and it appears in the course of the proceeding, that the whole of the libel had been read at length, as appears from p. 655 to p. 666. So that Dr. Sacheverell had *substantially* the same benefit of anything which could be alleged in the extenuation or exculpation, as if his libellous sermons had been entered verbatim upon the recorded impeachment. It was adjudged sufficient to state the crime *generally* in the impeachment. The libels were given in *evidence;* and it was not then thought of, that nothing should be given in evidence which was not specially charged in the impeachment. State Trials, vol. v.

But whatever their reasons were, (great and grave they were, no doubt,) such as your committee has stated it, is the *judgment* of the Peers on the law of parliament, as a part of the law of the land. It is the more forcible, as concurring with the judgment in the 11th of Richard the Second, and with the total silence of the Rolls and Journals concerning any objection to pleading ever being suffered to vitiate an impeachment, or to prevent evidence being given upon it on account of its generality, or any other failure.

Your committee do not think it probable that, even before this adjudication, the rules of pleading below could ever have been adopted in a parliamentary proceeding, when it is considered that the several statutes of jeofails, not less than twelve in number, have been made for the correction of an over-strictness in pleading, to the prejudice of substantial justice: yet Statutes at large from 12 Ed. I. to 16 and 17 Ch. II.

in no one of these is to be discovered the least mention of any proceeding in parliament. There is no doubt that the legislature would have applied its remedy to that grievance in parliamentary proceedings, if it had found those proceedings embarrassed with what Lord Mansfield, from the bench, and speaking of the matter of these statutes, very justly calls "disgraceful subtilties."

7 W. III. ch. 3, sect. 12. What is still more strong to the point, your committee finds, that, in the 7th of William the Third, an act was made for the regulating of trials for treason and misprision of treason, containing several regulations for reformation of proceedings at law, both as to matters of form and substance, as well as relative to evidence. It is an act thought most essential to the liberty of the subject; yet in this high and critical matter, so deeply affecting the lives, properties, honours, and even the inheritable blood, of the subject, the legislature was so tender of the high powers of this high court, deemed so necessary for the attainment of the great objects of its justice, so fearful of enervating any of its means, or circumscribing any of its capacities, even by rules and restraints the most necessary for the inferior courts, that they guarded against it by an express proviso, "That neither this act, nor anything therein contained, shall any ways extend to *any impeachment, or other proceedings in parliament, in any kind whatsoever.*"

CONDUCT OF THE COMMONS IN PLEADING.

The point being thus solemnly adjudged in the case of Dr. Sacheverell, and the principles of the judgment being in agreement with the whole course of parliamentary proceedings, the managers for this House have ever since considered it as an indispensable duty to assert the same principle in all its latitude upon all occasions on which it could come in question—and to assert it with an energy, zeal, and earnestness proportioned to the magnitude and importance of the Commons of Great Britain, in the religious observation of the rule, *that the law of parliament, and the law of parliament only, should prevail in the trial of their impeachments.*

State Trials, vol. vi. p. 17. In the year 1715 (1 Geo. I.) the Commons thought proper to impeach of high treason the lords who had entered into the rebellion of that period. This

was about six years after the decision in the case of Sacheverell. On the trial of one of these lords, (the Lord Wintoun,) after verdict the prisoner moved in arrest of judgment, and excepted against the impeachment for error, on account of the treason therein laid "not being described with sufficient certainty—the day on which the treason was committed not having been alleged." His counsel was heard to this point. They contended "that the forfeitures in cases of treason are very great; and therefore they humbly conceived that the accusation ought to contain all the certainty it is capable of; that the prisoner may not, by *general allegations*, be rendered incapable to defend himself in a case which may prove fatal to him. That they would not trouble their lordships with citing authorities; for they believed there is not one gentleman of the long robe but will agree that an indictment for any capital offence to be erroneous, if the offence be not alleged to be committed on a certain day."—"That this impeachment set forth only that in or about the months of September, October, or November, 1715,"—"the offence charged in the impeachment had been committed. The counsel argued that a proceeding by impeachment is a proceeding at the common law, for lex parliamentaria is a part of common law, and they submitted whether there is not the same certainty required in one method of proceeding at common law as in another."

The matter was argued elaborately and learnedly, not only on the general principles of the proceedings below, but on the inconvenience and possible hardships attending this uncertainty. They quoted Sacheverell's case, in whose impeachment "the precise days were laid when the Doctor preached each of these two sermons; and that by a like reason a certain day ought to be laid in the impeachment when this treason was committed; and that the authority of Dr. Sacheverell's case seemed so much stronger than the case in question, as the crime of treason is higher than that of a misdemeanour."

Here the managers for the Commons brought the point a second time to an issue, and that on the highest of capital cases; an issue, the event of which was to determine for ever, whether their impeachments were to be regulated by the law, as understood and observed in the inferior courts.—Upon the usage below there was no doubt; the indictment would

unquestionably have been quashed;—but the managers for the Commons stood forth upon this occasion with a determined resolution, and no less than four of them *seriatim* rejected the doctrine contended for by Lord Wintoun's counsel. They were all eminent members of parliament, and three of them great and eminent lawyers, namely, the then attorney-general, Sir William Thompson, and Mr. Cowper.

Mr. Walpole said, "Those learned gentlemen (Lord Wintoun's counsel) *seem to forget in what court they are.* They have taken up so much of your lordships' time in quoting of authorities, and using arguments to show your lordships what would quash an indictment in the *courts below*, that they seemed to forget they are now in a *court of parliament, and on an impeachment of the Commons of Great Britain.* For, should the Commons admit all that they have offered, it will not follow that the impeachment of the Commons is insufficient; and I must observe to your lordships, that neither of the learned gentlemen have offered to produce one instance relative to an impeachment; I mean to show that the sufficiency of an impeachment was never called in question for the generality of the charge, or that any instance of that nature was offered at before. The Commons do not conceive, that, if this exception would quash an indictment, it would therefore make the impeachment insufficient. I hope it never will be allowed here as a reason, that what quashes an indictment in the courts below will make insufficient an impeachment brought by the Commons of Great Britain."

The attorney-general supported Mr. Walpole in affirmance of this principle. He said: "I would follow the steps of the learned gentleman who spoke before me, and I think he has given a good answer to these objections. I would take notice that we are upon an impeachment, not upon an indictment. The courts below have set forms to themselves, which have prevailed for a long course of time, and thereby are become the forms by which those courts are to govern themselves; but it never was thought that the forms of those courts had any influence on the proceedings of parliament. In Richard the Second's time it is said in the records of parliament, that proceedings in parliament are not to be governed by the forms of Westminster Hall. We are in the case of an impeachment, and in the court of parliament. Your lordships

have already given judgment against six upon this impeachment, and it is warranted by the precedents in parliament; therefore we insist that the articles are good in substance."

Mr. Cowper—"They (the counsel) cannot but know that the usages of parliament are part of the laws of the land, although they differ in many instances from the common law as practised in the inferior courts, in point of form. My lords, if the Commons, in preparing articles of impeachment, should govern themselves by precedents of indictments, in my humble opinion they would depart from the ancient, nay, the constant, usage and practice of parliament. It is well known that the form of an impeachment has very little resemblance to that of an indictment; and, I believe, the Commons will endeavour to preserve the difference, by adhering to their own precedents."

Sir William Thompson—"We must refer to the forms and proceedings in the court of parliament, and which must be owned to be part of the law of the land. It has been mentioned already to your lordships, that the precedents in impeachments are not so nice and precise in form as in the inferior courts; and we presume your lordships will be governed by the forms of your own court, (especially forms that are not essential to justice,) as the courts below are by theirs; which courts differ one from the other in many respects as to their forms of proceedings, and the practice of each court is esteemed as the law of that court."

The attorney-general in reply maintained his first doctrine —"There is no uncertainty in it *that can be to the prejudice of the prisoner;* we insist it is according to the *forms of parliament*—he has pleaded to it, and your lordships have found him guilty."

The opinions of the judges were taken in the House of Lords on the 19th of March, 1715, upon two questions which had been argued in arrest of judgment, grounded chiefly on the practice of the courts below. To the first the judges answered: *It is necessary* that there be a *certain* day laid in such indictments on which the fact is alleged to be committed; and that alleging in such indictments that the fact was committed at or about a certain day would not be sufficient." To the second they answered: "That although a day certain, when the fact is supposed to be done, be alleged

in such indictments, yet it is not necessary upon the trial to prove the fact to be committed upon *that day;* but it is sufficient if proved to be done on *any other day before* the indictment found."

Then it was "agreed by the House, and ordered, that the lord high steward be directed to acquaint the prisoner at the bar in Westminster Hall, 'That the Lords have considered of the matters moved in arrest of judgment, and are of opinion, that they are not sufficient to arrest the same, but that the *impeachment* is sufficiently certain in point of time *according to the form of impeachments in parliament.*'"

Lords' Journals, vol. xx. p. 316.

On this final adjudication (given after solemn argument, and after taking the opinion of the judges) in affirmance of the law of parliament against the undisputed usage of the courts below, your committee has to remark, 1st, The preference of the custom of parliament to the usage below. By the very latitude of the charge, the parliamentary accusation gives the prisoner fair notice to prepare himself upon all points; whereas there seems something insnaring in the proceedings upon indictment, which fixing the specification of a day certain for the treason or felony as absolutely necessary in the charge, gives notice for preparation only on *that day;* whilst the prosecutor has the whole range of time antecedent to the indictment to allege, and give evidence of facts against the prisoner. It has been usual, particularly in later indictments, to add, "at several other times." But the strictness of naming one day is still necessary, and the want of the larger words would not quash the indictment. 2ndly, A comparison of the extreme rigour and exactness required in the more *formal* part of the proceeding by indictment with the extreme laxity used in the *substantial* part, (that is to say, the evidence received to prove the fact,) fully demonstrates that the partisans of those forms would put shackles on the high court of parliament, with which they are not willing, or find it wholly impracticable, to bind themselves. 3rdly, That the latitude of departure from the letter of the indictment (which holds in other matters besides this) is in appearance much more contrary to natural justice than anything which has been objected against the evidence offered by your managers, under a pretence that it exceeded the limits of pleading.

For in the case of indictments below, it must be admitted, that the prisoner may be unprovided with proof of an alibi, and other material means of defence, or may find some matters unlooked-for produced against him, by witnesses utterly unknown to him: Whereas nothing was offered to be given in evidence under any of the articles of this impeachment, except such as the prisoner must have had perfect knowledge of, the whole consisting of matters sent over by himself to the court of directors, and authenticated under his own hand. No substantial injustice or hardship of any kind could arise from our evidence under our pleading—whereas in theirs very great and serious inconveniencies might well happen.

Your committee has further to observe, that in the case of Lord Wintoun, as in the case of Dr. Sacheverell, the Commons had in their managers persons abundantly practised in the law, as used in the inferior jurisdictions, who could easily have followed the precedents of indictments—if they had not purposely, and for the best reasons, avoided such precedents.

A great writer on the criminal law, *Justice Foster*, in one of his discourses, fully recognises those principles for which your managers have contended, and which have to this time been uniformly observed in parliament. In a very elaborate reasoning on the case of a trial in parliament, (the trial of those who had murdered Edward the Second,) he observes thus; "It is *well known* that in *parliamentary* proceedings of this kind, *it is, and ever was*, sufficient that matters appear with proper light and certainty to a *common understanding*, without that minute exactness which is required in criminal proceedings in Westminster Hall. In these cases, the rule has always been *loquendum et vulgus*." And in a note he says, "In the proceeding against Mortimer, in this parliament, *so little regard was had to the forms used in legal proceedings*, that he who had been frequently summoned to parliament as a baron, and had lately been created Earl of March, is styled through the whole record merely Roger de Mortimer."

Discourse IV. p. 389.

The departure from the common forms in the first case alluded to by Foster, viz. the trial of Berkley, Mautravers, &c. for treason, in the murder of Edward the Second, might be more plausibly attacked, because they were tried, though in parliament,

Parl. Rolls, vol. ii. p. 57. 4 Ed. III. A. D. 1330.

by a jury of freeholders; which circumstance might have given occasion to justify a nearer approach to the forms of indictments below.—But no such forms were observed, nor in the opinion of this able judge ought they to have been observed.

PUBLICITY OF THE JUDGES' OPINIONS.

It appears to your committee, that from the 30th year of King Charles the Second, until the trial of Warren Hastings, Esquire, in all trials in parliament, as well upon impeachments of the Commons as on indictments brought up by certiorari, when any matter of law hath been agitated at the bar, or in the course of trial hath been stated by any lord in the court, it hath been the prevalent custom to state the same in open court. Your committee has been able to find, since that period, no more than one precedent (and that a precedent rather in form than in substance) of the opinions of the judges being taken privately, except when the case on both sides has been closed, and the Lords have retired to consider of their verdict, or of their judgment thereon. Upon the soundest and best precedents, the Lords have improved on the principles of publicity and equality, and have called upon the parties severally to argue the matter of law, previously to a reference to the judges; who, on their parts, have afterwards, in *open court*, delivered their opinions, often by the mouth of one of the judges, speaking for himself and the rest, and in their presence: and sometimes all the judges have delivered their opinion *seriatim*, (even when they have been unanimous in it,) together with their reasons upon which their opinion had been founded. This, from the most early times, has been the course in all judgments in the House of Peers. Formerly even the record contained the reasons of the decision. "The reason wherefore (said Lord Coke) the records of parliaments have been so highly extolled is, that therein is set down, in cases of difficulty, not only the judgment and resolution, but *the reasons and causes of the same* by so great advice."

Coke, Inst. 4. p. 3.

State Trials, vol. ii. p 725. A. D. 1678.

In the 30th of Charles the Second, during the trial of Lord Cornwallis, on the suggestion of a question in law to the judges, Lord Danby demanded of the lord high steward, the Earl of Nottingham, "Whether it would be proper here (in open court) to ask

the question of your Grace, or to propose it to the judges?" The lord high steward answered, "If your lordships doubt of anything whereon a question in law ariseth, the latter opinion, and the *better* for the prisoner, is—*that it must be stated in the presence of the prisoner, that he may know whether the question be truly put.*" It hath "*sometimes* been practised otherwise; and the Peers have sent for the judges, and have asked their opinion in private, and have come back and have given their verdict according to that opinion, and there is scarcely a precedent of its being otherwise done. There is a later authority in print that doth settle the point so as I tell you—and I do conceive *it ought to be followed;* and it being safer for the prisoner, my humble opinion to your lordship is—that he ought to be present at *the stating of the question.* Call the *prisoner.*"—The prisoner, who had withdrawn, again appearing, he said,

"My Lord Cornwallis, and my lords the Peers, since *they* have withdrawn, have conceived a doubt in some matter *of fact* in your case; and they have that tender regard of a prisoner at the bar, *that they will not suffer a case to be put up in his absence,* lest it should chance to prejudice him by being *wrong stated.*" Accordingly the question was both put and the judges' answer given publicly and in his presence.

Very soon after the trial of Lord Cornwallis, the impeachment against Lord Stafford was brought to a hearing, that is, in the 32nd of Charles the Second. In that case the lord at the bar having stated a point of law, "touching the necessity of two witnesses to an overt act in case of treason;" the lord high steward told Lord Stafford that "all the judges that assist them, *and are here in your lordships' presence and hearing,* should deliver their opinions, whether it be doubtful and disputable, or not."—Accordingly the judges delivered their opinion, and each argued it (though they were all agreed) *seriatim* and *in open court.* Another abstract point of law was also proposed from the bar on the same trial, concerning the legal sentence in high treason; and in the same manner the judges on reference delivered their opinion in *open court;* and no objection was taken to it, as anything new or irregular. State Trials, vol. iii. p. 212.

In the first of James the Second came on a remarkable trial of a peer;—the trial of Lord Delamere. On that occa-

sion a question of law was stated. There also, in conformity to the precedents and principles given on the trial of Lord Cornwallis, and the precedent in the impeachment of Lord Stafford, the then lord high steward took care that the opinion of the judges should be given in open court.

Precedents grounded on principles so favourable to the fairness and equity of judicial proceedings, given in the reigns of Charles the Second and James the Second, were not likely to be abandoned after the revolution. The first trial of a peer, which we find after the revolution, was that of the Earl of Warwick.

State Trials, vol. v. p. 169

In the case of the Earl of Warwick, 11 Will. III., a question in law upon evidence was put to the judges; the statement of the question was made in open court by the lord high steward, Lord Somers: "If there be six in company, and one of them is killed, the other five are afterwards indicted, and three are tried and found guilty of manslaughter, and upon their prayers have their clergy allowed, and the burning in the hand is respited, but not pardoned, whether any of the three can be a witness on the trial of the other two." Lord Halifax—"I suppose your lordships will have the opinion of the judges upon this point; and *that must be in the presence of the prisoner.*" Lord high steward (*Lord Somers*)—"*It must certainly be in the presence of the prisoner*, if you ask the judges' opinions."

In the same year Lord Mohun was brought to trial upon an indictment for murder. In this single trial a greater number of questions was put to the judges in matter of law, than probably was ever referred to the judges in all the collective body of trials before or since that period. That trial, therefore, furnishes the largest body of authentic precedents in this point, to be found in the records of parliament. The number of questions put to the judges in this trial was twenty-three. They all originated from the Peers themselves; yet the court called upon the party's counsel, as often as questions were proposed to be referred to the judges, as well as on the counsel for the Crown, to argue every one of them *before* they went to those learned persons. Many of the questions, accordingly, were argued at the bar at great length. The opinions were given and argued *in open court.* Peers fre-

State Trials, vol. iv. from p. 538 to 551.

quently insisted that the judges should give their opinions *seriatim*, which they did always publicly in court, with great gravity and dignity, and greatly to the illustration of the law, as they held and acted upon it in their own courts.

In Sacheverell's case (just cited for another purpose) the Earl of Nottingham demanded whether he might not propose a question of law to the judges *in open court*. It was agreed to; and the judges gave their answer *in open court*, though this was after verdict given: And in consequence of the advantage afforded to the prisoner in hearing *the opinion* of the judges, he was thereupon enabled to move in arrest of judgment.

The next precedent which your committee finds of a question put by the Lords, sitting as a court of judicature, to the judges pending the trial, was in the 20th of George the Second; when Lord Balmerino, who was tried on an indictment for high treason, having raised a doubt, whether the evidence proved him to be at the place assigned for the overt act of treason on the day laid in the indictment. The point was argued at the bar by the counsel for the Crown in the prisoner's presence, and for his satisfaction. The prisoner, on hearing the argument, waived his objection, but the then lord president moving their lordships to adjourn to the chamber of parliament, the Lords adjourned accordingly; and after some time, returning into Westminster Hall—the lord high steward (*Lord Hardwicke*) said, "Your lordships were pleased, in the chamber of parliament, to come to a resolution, that the opinion of the learned and reverend judges should be taken on the following question, namely, Whether it is necessary that an overt act of high treason should be proved to have been committed on the particular day laid in the indictment? Is it your lordships' pleasure, that the judges do now give their opinion on that question?

Lords' Journals, vol. ix. p. 606. Die Lunæ, 28 July, 1746.

"Lords—Aye, aye.

"Lord high steward—My lord chief justice!

Lord chief Justice Lee.

"Lord chief justice,

The question proposed by your lordships is, whether it be necessary that an overt act of high treason should be proved to be committed on the particular day laid in the indict-

ment? We are all of opinion, that it is not necessary to prove the overt act to be committed on the particular day laid in the indictment—but as evidence may be given of an overt act before the day, so it may be after the day specified in the indictment—for the day laid is circumstance and form only, and not material in point of proof, this is the known constant course of proceeding in trials."

Here the case was made for the judges, for the satisfaction of one of the Peers, after the prisoner had waived his objection. Yet it was thought proper, as a matter of course and of right, that the judges should state the question put to them in the open court, and in presence of the prisoner—and that in the same open manner, and in the same presence, their answer should be delivered.

Your committee concludes their precedents begun under *Lord Nottingham*, and ended under *Lord Hardwicke*. They are of opinion, that a body of precedents so uniform, so accordant with principle, made in such times, and under the authority of a succession of such great men, ought not to have been departed from. The single precedent to the contrary, to which your committee has alluded above, was on the trial of the Duchess of Kingston, in the reign of his present Majesty. But in that instance, the reason of the judges were, by order of the House, delivered in writing, and entered at length on the Journals; so that the legal principle of the decision is equally to be found, which is not the case in any one instance of the present impeachment.

The Earl of Nottingham, in Lord Cornwallis's case, conceived, though it was proper and agreeable to justice, that this mode of putting questions to the judges, and receiving their answer in public, was not supported by former precedents: But, he thought, a book of authority had declared in favour of this course. Your committee is very sensible, that antecedent to the great period to which they refer, there are instances of questions having been put to the judges privately. But we find the *principle* of publicity (whatever variations from it there might be in practice) to have been so clearly established at a more early period, that all the judges of England resolved, in Lord Morley's trial, in the year 1666, (about twelve years before the observation of Lord Nottingham,) *on a supposition, that the trial should be actually con-*

cluded, and the Lords retired to the chamber of parliament to consult on their verdict, that even in that case (much stronger than the observation of your committee requires for its support) if their opinions should then be demanded by the Peers, for the information of their private conscience, yet they determined that they should be given in public. This resolution is in itself so solemn, and is so bottomed on constitutional principle and legal policy, that your committee have thought fit to insert it verbatim, in their report, as they relied upon it at the bar of the court, when they contended for the same publicity.

"It was resolved, That in case the Peers who are triers, *after the evidence given, and the prisoner withdrawn, and they gone to consult of the verdict,* should desire to speak with any of the judges, to have their opinion upon any point of law, that if the lord steward spoke to us to go, we should go to them. But when the Lords asked us any question, we should not deliver any private opinion; but let them know, *we were not to deliver any private opinion without conference with the rest of the judges, and that to be done openly in court; and this (notwithstanding the precedent in the case of the Earl of Castlehaven) was thought prudent, in regard of ourselves, as well as for the avoiding suspicion which might grow by private opinions—ALL resolutions of judges being ALWAYS done in public.*" Kelynge's Reports, p. 54.

The judges in this resolution overruled the authority of the precedent, which militated against the whole spirit of their place and profession. Their declaration was without reserve or exception, that "*all* resolutions of the judges are *always* done in public."—These judges (as should be remembered to their lasting honour) did not think it derogatory from their dignity, nor from their duty to the House of Lords, to take such measures concerning the publicity of their resolutions as should secure them from suspicion. They knew that the mere circumstance of privacy in a judicature, where any publicity is in use, tends to beget suspicion and jealousy. —Your committee is of opinion, that the honourable policy of avoiding suspicion, by avoiding privacy, is not lessened by anything which exists in the present time, and in the present trial.

Your committee has here to remark, that this learned

Rushworth, vol. ii. p. 93, 94, 95, 100.

judge seemed to think the case of Lord Audley [Castlehaven] to be more against him than in truth it was. The precedents were as follow: The opinions of the judges were taken three times. The first time by the attorney-general at Serjeants' Inn, antecedent to the trial,—the last time, after the Peers had retired to consult on their verdict,—the middle time, *was during the trial itself;* and here the opinion was taken in open court, agreeably to what your committee contends to have been the usage ever since this resolution of the judges. What was done before seemed to have passed sub silentio, and possibly through mere inadvertence.

Your committee observes, That the precedents by them relied on, were furnished from times in which the judicial proceedings in parliament, and in all our courts, had obtained a very regular form. They were furnished at a period in which Justice Blackstone remarks, that more laws were passed, of importance to the rights and liberties of the subject, than in any other. These precedents lean all one way, and carry no marks of accommodation to the variable spirit of the times and of political occasions. They are the same before and after the revolution. They are the same through five reigns. The great men who presided in the tribunals which furnished these examples, were in opposite political interests, but all distinguished for their ability, integrity, and learning.

The Earl of Nottingham, who was the first on the bench to promulgate this publicity as a rule, has not left us to seek the principle in the case: That very learned man considers the publicity of the questions and answers as a matter of justice, *and of justice favourable to the prisoner.* In the case of Mr. Hastings, the prisoner's counsel did not join your committee in their endeavours to obtain the publicity we demanded. Their reasons we can only conjecture. But your managers, acting for this House, were not the less bound to see that the due parliamentary course should be pursued, even when it is most favourable to those whom they impeach. If it should answer the purposes of one prisoner to waive the rights which belong to all prisoners, it was the duty of your managers to protect those general rights against that particular prisoner. It was still more their duty to endeavour, that their *own* questions should not be

erroneously stated, or cases put which varied from those which they argued, or opinions given in a manner not supported by the spirit of our laws and institutions, or by analogy with the practice of all our courts.

Your committee, much in the dark about a matter, in which it was so necessary that they should receive every light, have heard, that in debating this matter abroad, it has been objected, that many of the precedents on which we most relied were furnished in the courts of the lord high steward, and not in trials where the peers were judges; and that the lord high steward not having it in his power to retire with the juror peers, the judges' opinions, from necessity, not from equity to the parties, were given before that magistrate.

Your committee thinks it scarcely possible, that the Lords could be influenced by such a feeble argument. For admitting the fact to have been as supposed, there is no sort of reason why so uniform a course of precedents, in a legal court, composed of a peer for judge, and peers for triers—a course so favourable to all parties and to equal justice—a course in concurrence with the procedure of all our other courts, should not have the greatest authority over their practice in every trial before the *whole body* of the peerage.

The Earl of Nottingham, who acted as high steward in one of these commissions, certainly knew what he was saying. He gave no such reason. His argument for the publicity of the judges' opinions did not turn at all on the nature of his court, or of his office in that court. It rested on the equity of the principle, and on the fair dealing due to the prisoner.

Lord Somers was in no such court; yet his declaration is full as strong. He does not indeed argue the point, as the Earl of Nottingham did when he considered it as a new case. Lord Somers considers it as a point quite settled—and on longer standing in need of being supported by reason or precedent.

But it is a mistake that the precedents stated in this report are wholly drawn from proceedings in that kind of court. Only two are cited, which are furnished from a court constituted in the manner supposed. The rest were in trials

by all the peers, and not by a jury of peers with a high steward.

Foster's Crown Law, p. 145.

After long discussions with the peers on this subject, "The Lords' committees in a conference told them [the committee of this House, appointed to a conference on the matter] that the high steward is but speaker pro tempore, and giveth his vote as well as the other Lords: This changeth not the nature of the court. And the Lords declared, that they have power enough to proceed to trial, though the king should not name a high steward." On the same day, "It is declared and ordered, by the Lords spiritual and temporal in parliament assembled, that the office of high steward on trials of peers upon impeachments is not necessary to the House of Peers—but that Lords may proceed in such trials, if a high steward is not appointed, according to their humble desire."

To put the matter out of all doubt, and to remove all jealousy on the part of the Commons, the commission of the lord high steward was then altered. These rights, contended for by the Commons in their inpeachments, and admitted by the Peers, were asserted in the proceedings preparatory to the trial of Lord Stafford, in which that long chain of uniform precedents, with regard to the publicity of the judges' opinions in trials, begins.

For these last citations, and some of the remarks, your committee are indebted to the learned and upright Justice Foster. They have compared them with the Journals, and find them correct. The same excellent author proceeds to demonstrate, that whatever he says of trials by impeachment is equally applicable to trials before the high steward on indictment; and consequently that there is no ground for a distinction, with regard to the public declaration of the judges' opinions, founded on the inapplicability of either of these cases to the other. The argument on this whole matter is so satisfactory, that your committee has annexed it at large to their Report.[1] As there is no difference in fact between these trials, (especially since the act which provides that all the peers shall be summoned to the trial of a peer,) so there is no difference in the reason and principle of the

[1] See the Appendix, No. 1.

publicity, let the matter of the steward's jurisdiction be as it may.

PUBLICITY GENERAL

Your committee do not find any positive law which binds the judges of the courts in Westminster Hall publicly to give a reasoned opinion from the bench, in support of their judgment upon matters that are stated before them. But the course hath prevailed from the oldest times. It hath been so general and so uniform, that it must be considered as the law of the land. It has prevailed, so far as we can discover, not only in all the courts which now exist, whether of law or equity, but in those which have been suppressed or disused, such as the court of Wards and the Star Chamber. An author, quoted by Rushworth, speaking of the constitution of that chamber, says, "And so it was resolved, *by the judges, on reference made to them; and their opinion, after deliberate hearing and view of former precedents, was published in open court.*" It appears elsewhere in the same compiler, that all their proceedings were public, even in deliberating previous to judgment. Rushworth, vol. ii. p. 457, et passim.

The judges in their reasonings have always been used to observe on the arguments employed by the counsel on either side; and on the authorities cited by them, assigning the grounds for rejecting the authorities which they reject, or for adopting those to which they adhere, or for a different construction of law, according to the occasion. This publicity, not only of decision but of deliberation, is not confined to their several courts, whether of law or equity, whether above or at Nisi Prius, but it prevails where they are assembled,—in the Exchequer chamber, or at Serjeant's Inn, or wherever matters come before the judges collectively for consultation and revision.—It seems to your committee to be moulded in the essential frame and constitution of British judicature. Your committee conceives, that the English jurisprudence has not any other sure foundation, nor consequently the lives and properties of the subject any sure hold, but in the maxims, rules, and principles, and juridical traditionary line of decisions contained in the notes taken, and

from time to time published, (mostly under the sanction of the judges,) called Reports.

In the early periods of the law it appears to your committee, that a course still better had been pursued, but grounded on the same principles; and that no other cause than the multiplicity of business prevented its continuance. "Of ancient time (says Lord Coke) in cases of difficulties, either criminal or civil, *the reasons and causes* of the judgment were set down *upon the record*, and so continued in the reigns of Ed. I. and Ed. II., and then there was no need of reports; but in the reign of Ed. III. (when the law was in its height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the record, but then the *great casuists and reporters of cases* (certain grave and sad men) published the cases, *and the reasons and causes of the judgments or resolutions*, which, from the beginning of the reign of Ed. III. and since, we have in print. But these also, though of great credit and excellent use in their kind, *yet far underneath the authority of the parliament rolls, reporting the acts, judgments, and resolutions of that highest court.*"

Coke, 4 Inst. p. 5.

Reports, though of a kind less authentic than the *Year Books* to which Coke alludes, have continued without interruption to the time in which we live. It is well known, that the elementary treatises of law, and the dogmatical treatises of English jurisprudence, whether they appear under the names of Institutes, Digests, or Commentaries, do not rest on the authority of the supreme power, like the books called the Institute, Digest, Code, and authentic collations in the Roman law. With us, doctrinal books of that description have little or no authority, other than as they are supported by the adjudged cases and reasons given at one time or other from the bench; and to these they constantly refer. This appears in Coke's Institutes, in Comyns's Digest, and in all books of that nature. To give judgment privately is to put an end to reports; and to put an end to reports, is to put an end to the law of England. It was fortunate for the constitution of this kingdom, that in the judicial proceedings in the case of ship money, the judges did not then venture to depart from the ancient

course. They gave and they argued their judgment in open court.[1] Their reasons were publicly given, and the reasons assigned for their judgment took away all its authority. The great historian, Lord Clarendon, at that period a young lawyer, has told us that the judges gave as law from the bench what every man in the hall knew not to be law.

This publicity, and this mode of attending the decision with its grounds, is observed not only in the tribunals where the judges preside in a judicial capacity individually or collectively, but where they are consulted by the Peers, on the law in all *writs of error* brought from below. In the opinion they give of the matter assigned as error, one at least of the judges argues the questions at large. He argues them publicly, though in the chamber of parliament; and in such a manner that every professor, practitioner, or student of the law, as well as the parties to the suit, may learn the opinions of all the judges of all the courts upon those points, in which the judges in one court might be mistaken.

Your committee is of opinion that nothing better could be devised by human wisdom than argued judgments publicly delivered, for preserving unbroken the great traditionary body of the law, and for marking, whilst that great body remained unaltered, every variation in the application and the construction of particular parts; for pointing out the ground of each variation; and for enabling the learned of the bar and all intelligent laymen to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable nature of human affairs, a progressive experience, and the improvement of moral philosophy, from those hazardous changes in any of the ancient opinions and decisions, which may arise from ignorance, from levity, from false refinement, from a spirit of innovation, or from other motives, of a nature not more justifiable.

Your committee, finding this course of proceeding to be concordant with the character and spirit of our judicial proceeding, continued from time immemorial, supported by arguments of sound theory, and confirmed by effects highly beneficial, could not see without uneasiness, in this great trial for Indian offences, a marked innovation. Against their

[1] This is confined to the judicial opinions in Hambden's case. It does not take in all the extra-judicial opinions.

reiterated requests, remonstrances, and protestations, the opinions of the judges were always taken secretly. Not only the constitutional publicity for which we contend was refused to the request and entreaty of your committee: but when a noble peer, on the 24th of June, 1789, did in open court declare, that he would then propose some questions to the judges in that place, and hoped to receive their answer openly, according to the approved good customs of that and of other courts—the Lords instantly put a stop to the further proceeding by an immediate adjournment to the chamber of parliament. Upon this adjournment we find, by the Lords' Journals, that the House on being resumed, ordered, that "it should resolve itself into a committee of the whole House, on Monday next, to take into consideration what is the proper manner of putting questions by the Lords to the judges, and of their answering the same in judicial proceedings." The House did thereon resolve itself into a committee, from which the Earl of Galloway, on the 29th of the same month, reported as follows: "That the House has, in the trial of Warren Hastings, Esquire, proceeded in a regular course in the manner of propounding their questions to the judges in the chamber of parliament, and in receiving their answers to them in the same place." The resolution was agreed to by the Lords; but the protest (as below)[1] was entered thereupon, and supported by strong arguments.

[1] *Dissentient.*

1st, Because, by consulting the judges out of court in the absence of the parties, and with shut doors, we have deviated from the most approved, and almost uninterrupted, practice of above a century and a half, and established a precedent not only destructive of the justice due to the parties at our bar, but materially injurious to the rights of the community at large, who in cases of impeachments are more peculiarly interested that all proceedings of this high court of parliament should be open and exposed, like all other courts of justice, to public observation and comment, in order that no covert and private practices should defeat the great ends of public justice.

2ndly, Because, from private opinions of the judges, upon private statements, which the parties have neither heard nor seen, grounds of a decision will be obtained, which must inevitably affect the cause at issue at our bar; this mode of proceeding seems to be a violation of the first principle of justice, inasmuch as we thereby force and confine the opinions of the judges to our private statement; and through the medium of our subsequent decision we transfer the effect of those opinions to the parties,

Your committee remark, that this resolution states only that the House had proceeded in this secret manner of propounding questions to the judges, and of receiving their answers during the trial, and on matters of debate between the parties, "in a regular course." It does not assert that another course would not have been *as* regular. It does not state either judicial convenience, principle, or body of precedents for that *regular course.* No such body of precedents appear on the Journal that we could discover. Seven-and-twenty, at least, in a regular series, are directly contrary to this regular course. Since the æra of the 29th of June, 1789, no one question has been admitted to go publicly to the judges.

This determined and systematic privacy was the more alarming to your committee, because the questions did not (except in that case) originate from the Lords for the direction of their own conscience. These questions, in some material instances, were not made or allowed by the parties at the bar, nor settled in open court, but differed materially from what your managers contended was the true state of the question, as put and argued by them. They were such as the Lords thought proper to state for them. Strong remonstrances produced some alteration in this particular; but even after these remonstrances, several questions were made, on statements which the managers never made nor admitted.

Your committee does not know of any precedent before this, in which the Peers, on a proposal of the Commons, or of a less weighty person before their court, to have the cases publicly referred to the judges, and their arguments and r

who have been deprived of the right and advantage of being heard by such private, though unintended, transmutation of the point at issue.

3rdly, Because the prisoners who may hereafter have the misfortune to stand at our bar will be deprived of that consolation which the Lord High Steward Nottingham conveyed to the prisoner, Lord Cornwallis, viz. "That the Lords have that tender regard of a prisoner at the bar, that they will not suffer a case to be put in his absence, lest it should prejudice him by being wrong stated."

4thly, Because unusual mystery and secrecy in our judicial proceedings must tend either to discredit the acquittal of the prisoner, or render the justice of his condemnation doubtful.

PORCHESTER.
SUFFOLK AND BERKSHIRE
LOUGHBOROUGH.

solutions delivered in their presence, absolutely refused. The very few precedents of such private reference on trials, have been made, as we have observed already, sub silentio, and without any observation from the parties. In the precedents we produce, the determination is accompanied with its reasons, and the publicity is considered as the clear undoubted right of the parties.

Your committee, using their best diligence, have never been able to form a clear opinion upon the ground and principle of these decisions. The mere result upon each case decided by the Lords, furnished them with no light from any principle, precedent, or foregone authority of law or reason, to guide them with regard to the next matter of evidence which they had to offer, or to discriminate what matter ought to be urged, or to be set aside; your committee not being able to divine, whether the particular evidence, which, upon a conjectural principle, they might choose to abandon, would not appear to this House, and to the judging world at large, to be admissible, and possibly decisive proof. In these straits they had and have no choice, but either wholly to abandon the prosecution, and of consequence to betray the trust reposed in them by this House, or to bring forward such matter of evidence as they are furnished with from sure sources of authenticity, and which in their judgment, aided by the best advice they could obtain, is possessed of a moral aptitude juridically to prove or to illustrate the case which the House had given them in charge.

MODE OF PUTTING THE QUESTIONS.

When your committee came to examine into those private opinions of the judges, they found, to their no small concern, that the mode both of putting the questions to the judges, and their answers, was still more unusual and unprecedented than the privacy with which those questions were given and resolved.

This mode strikes, as we apprehend, at the vital privileges of the House. For, with a single exception of the first question put to the judges in 1788, the case being stated the questions are raised directly, specifically, and by name, on those privileges; that is, *what evidence is it competent for the managers of the House of Commons to produce?* We conceive

that it was not proper, *nor justified by a single precedent*, to refer to the judges of the inferior courts any question, and still less for them to decide in their answer, of what is or is not competent for the House of Commons, or for any committee acting under their authority, to do, or not to do, in any instance or respect whatsoever. This new and unheard-of course can have no other effect than to subject to the discretion of the judges the law of parlament and the privileges of the House of Commons, and in a great measure the judicial privileges of the Peers themselves; any intermeddling in which on their part we conceive to be a dangerous and unwarrantable assumption of power. It is contrary to what has been declared by Lord Coke himself, in a passage before quoted, to be the duty of the judges; and to what the judges of former times have confessed to be their duty, on occasions to which he refers in the time of Henry the Sixth. And we are of opinion, that the conduct of those sages of the law, and others their successors, who have been thus diffident and cautious in giving their opinions upon matters concerning parliament, and particularly on the privileges of the House of Commons, was laudable in the example, and ought to be followed; particularly the principles upon which the judges declined to give their opinions in the year 1614. It appears by the Journals of the Lords, that a question concerning the law relative to impositions having been put to the judges, the proceeding was as follows: "Whether the lords, the judges, shall be heard deliver their opinion touching the point of impositions, before further consideration be had of answer to be returned to the Lower House, concerning the message from them lately received." "Whereupon the number of the Lords, requiring to hear the judges' opinions by saying '*Content*,' exceeding the others which said '*Non Content*,' the lords, the judges, so desiring were permitted to withdraw themselves into the lord chancellor's private rooms; where having remained awhile, and advised together, they returned into the House, and having taken their places, and standing discovered, did by the mouth of the lord chief justice of the King's Bench, humbly desire to be forborne at this time, in this place, to deliver any opinion in this case, for many weighty and important reasons, which his lordship delivered with great gravity and eloquence; concluding, that

himself and his brethren are upon particulars in judicial course to speak and judge between the king's Majesty and his people, and likewise between his Highness's subjects, and in no case to be disputants on any side."

Your committee do not find anything which, through inadvertence or design, had a tendency to subject the law and course of parliament to the opinions of the judges of the inferior courts, from that period until the 1st of James the Second. The trial of Lord Delamere for high treason was had by special commission before the lord high steward: It was before the act which directs that *all* peers should be summoned to such trials. This was not a trial in full parliament, in which case it was then contended for, that the lord high steward was the judge of the law, presiding in the court, but had no vote in the verdict; and that the Lords were triers only, and had no vote in the judgment of the law. This was looked on as the course where the trial was not in full parliament, in which latter case there was no doubt but that the lord high steward made a part of the body of the triers, and that the whole House was the judge.[1] In this cause, after the evidence for the Crown had been closed, the prisoner prayed the court to adjourn. The lord high steward doubted his power to take that step in that stage of the trial; and the question was, "Whether, the trial not being in full parliament, when the prisoner is upon his trial, and evidence for the king is given, the Lords being (as it may be termed) charged with the prisoner, the Peers may separate for a time, which is the consequence of an adjournment." The lord high steward doubted of his power to adjourn the court. The case was evidently new, and his Grace proposed to have the opinion of the judges upon it. The judges, in consequence, offering to withdraw into the Exchequer chamber. Lord Falconberg "insisted that the question concerned the privileges of the peerage only, and conceived that the *judges are not concerned to make any determination in that matter; and being such a point of privilege, certainly the inferior courts have no right to determine it.*" It was insisted, therefore, that the lords triers should retire with the judges. The lord high steward thought differently, and opposed this motion; but

[1] See the lord high steward's speech on that head. 1st J, II.

finding the other opinion generally prevalent, he gave way, and the lords triers retired, taking the judges to their consult. When the judges returned, they delivered their opinion in *open court.* Lord Chief Justice *Herbert* spoke for himself and the rest of the judges. After observing on the novelty of the case, with a temperate and becoming reserve with regard to the rights of parliaments, he marked out the limits of the office of the inferior judges on such occasions, and declared, "*All that we, the judges, can do, is to acquaint your Grace and the noble Lords what the law is in the inferior courts in cases of the like nature,* and the reason of the law in those points, and *then leave the jurisdiction of the court to its proper judgment.*" The chief justice concluded his statement of the usage below, and his observations on the difference of the cases of a peer tried in full parliament, and by a special commission, in this manner: "Upon the whole matter, my lords, whether the Peers, being judges in the one and not in the other instance, alters the case, or whether the reason of the law in inferior courts, why the jury are not permitted to separate until they have discharged themselves of their verdict, may have any influence on this case, *where that reason seems to fail,* the prisoner being to be tried by men of unquestionable honour, *we cannot presume so far as to make any determination, in a case which is both new to us, and of great consequence in itself;* but think it the proper way for *us,* having laid matters as we conceive them before your Grace and my lords, *to submit the jurisdiction of your own court to your own determination.*"

It appears to your committee, that the Lords, who stood against submitting the course of their high court to the inferior judges, and that the judges, who, with a legal and constitutional discretion, declined giving any opinion in this matter, acted as became them; and your committee sees no reason why the Peers, at this day, should be less attentive to the rights of their court, with regard to an exclusive judgment on their own proceedings, or to the rights of the Commons acting as accusers for the whole commons of Great Britain in that court, or why the judges should be less reserved in deciding upon any of these points of high parliamentary privilege, than the judges of that and the preceding periods. This present case is a proceeding in full parliament, and not

like the case under the commission in the time of James the Second, and still more evidently out of the province of the judges in the inferior courts.

All the precedents previous to the trial of Warren Hastings, Esquire, seem to your committee to be uniform. The judges had constantly refused to give an opinion on any of the powers, privileges, or competences of either House. But in the present instance your committee has found, with great concern, a further matter of innovation. Hitherto the constant practice has been to put questions to the judges but in the three following ways; as, 1st, A question of pure abstract law, without reference to any case, or merely upon an A. B. case stated to them. 2ndly, To the legal construction of some act of parliament. 3rdly, To report the course of proceeding in the courts below, upon an abstract case. Besides these three, your committee knows not of a single example of any sort, during the course of any judicial proceeding at the bar of the House of Lords, whether the prosecution has been by indictment, by information from the attorney-general, or by impeachment of the House of Commons.

In the present trial, the judges appear to your committee not to have given their judgment on points of law, stated as such, but to have in effect tried the cause, in the whole course of it, with one instance to the contrary.

The Lords have stated no question of general law; no question on the construction of an act of parliament; no question concerning the practice of the courts below. They put *the whole gross case, and matter in question, with all its circumstances, to the judges.* They have, *for the first time,* demanded of them what particular person, paper, or document ought, or ought not, to be produced before them by the managers for the Commons of Great Britain:—for instance, whether, under such an article, the Bengal consultations of such a day, the examination of Rajah Nundcomar, and the like. The operation of this method is in substance, not only to make the judges masters of the whole process and conduct of the trial, but through that medium to transfer to them the ultimate judgment on the cause itself and its merits.

The judges attendant on the court of Peers, hitherto have not been supposed to know the particulars and minute circumstances of the cause, and must therefore be incompetent

to determine upon those circumstances. The evidence taken is not, of course, that we can find, delivered to them—nor do we find, that in fact any order has been made for that purpose, even supposing that the evidence could at all regularly be put before them. They are present in court, not to hear the trial, but solely to advise in matter of law—they cannot take upon themselves to say anything about the Bengal consultations, or to know anything of Rajah Nundcomar, of Kelleram, or of Mr. Francis, or Sir John Clavering.

That the House may be the more fully enabled to judge of the nature and tendency of thus putting the question *specifically, and on the gross case*, your committee thinks fit here to insert one of those questions, reserving a discussion of its particular merits to another place. It was stated on the 22nd of April, 1790, "On that day the managers proposed to show that Kelleram fell into great balances with the East India Company, in consequence of his appointment."—It is so stated in the printed Minutes (p. 1206). But the real tendency and gist of the proposition is not shown.—However the question was put, "whether it be or be not competent *to the managers for the Commons to give evidence upon the charge in the 6th article, to prove* that the rent which the defendant, Warren Hastings, Esquire, let the lands mentioned in the said 6th article of charge to Kelleram, fell into arrear and was deficient; and whether, if proof were offered that the rent fell into arrear immediately after the letting, the evidence in that case would be competent?" The judges answered, on the 27th of the said month, as follows: "*It is not competent for the managers for the House of Commons* to give evidence upon the charge in the 6th article, to prove that the rent at which the defendant, Warren Hastings, let the lands in the said 6th article of charge to Kelleram, fell into arrear and was deficient."

The House will observe, that on the question two cases of competence were put—The first on the competence of managers for the House of Commons to give the evidence supposed to be offered by them, but which we deny to have been offered in the manner and for the purpose assumed in this question: The second is in a shape apparently more abstracted, and more nearly approaching to parliamentary regularity—on the competence of the evidence itself, in the case

of a supposed circumstance being superadded. The judges answered only the first, denying flatly the competence of the managers. As to the second, the competence of the supposed evidence, they are profoundly silent. Having given this blow to our competence, about the other question, (which was more within their province,) namely, the competence of evidence on a case hypothetically stated, they gave themselves no trouble. The Lords on that occasion rejected the whole evidence. On the face of the judges' opinion, it is a determination *on a case*, the trial of which was not with them, but it contains *no rule or principle* of law, to which alone it was their duty to speak.[1]

These essential innovations tend, as your committee conceives, to make an entire alteration in the constitution, and in the purposes of the high court of parliament, and even to reverse the ancient relations between the Lords and the judges. They tend wholly to take away from the Commons the benefit of making good their case before the proper judges, and submits this high inquest to the inferior courts.

Your committee sees no reason why, on the same principles and precedents, the Lords may not terminate their proceedings in this, and in all future trials, by sending the whole body of evidence taken before them, in the shape of a special verdict, to the judges, and may not demand of them, whether they ought, on the whole matter, to acquit or condemn the prisoner; nor can we discover any cause that should hinder them [the judges] from deciding on the accumulative body of the evidence, as hitherto they have done in its parts, and from dictating the existence or non-existence of a misdemeanour or other crime in the prisoner, as they think fit; —without any more reference to principle, or precedent of law, than hitherto they have thought proper to apply in determining on the several parcels of this cause.

Your committee apprehends, that very serious inconveniencies and mischiefs may hereafter arise from a practice in the House of Lords, of considering itself as unable to act without the judges of the inferior courts, of implicitly following their dictates, of adhering with a literal precision to the very words of their responses, and of putting them to decide on

[1] All the resolutions of the judges, to the time of the reference to the committee, are in the Appendix, No. 2.

the competence of the managers for the Commons,—the competence of the evidence to be produced,—who are to be permitted to appear,—what questions are to be asked of witnesses,—and indeed, parcel by parcel, on the whole of the gross case before them; as well as to determine upon the order, method, and process of every part of their proceedings. The judges of the inferior courts are by law rendered independent of the Crown. But this, instead of a benefit to the subject, would be a grievance, if no way was left of producing a responsibility. If the Lords cannot or will not act without the judges, and if (which God forbid!) the Commons should find it at any time hereafter necessary to impeach them before the Lords; this House would find the Lords disabled in their functions, fearful of giving any judgment on matter of law, or admitting any proof of fact, without them [the judges]; and having once assumed the rule of proceeding and practice below as their rule, they must at every instant resort, for their means of judging, to the authority of those whom they are appointed to judge.

Your committee must always act with regard to men as they are. There are no privileges or exemptions from the infirmities of our common nature. We are sensible, that all men, and without any evil intentions, will naturally wish to extend their own jurisdiction, and to weaken all the power by which they may be limited and controlled. It is the business of the House of Commons to counteract this tendency. This House had given to its managers no power to abandon its privileges, and the rights of its constituents. They were themselves as little disposed as authorized to make this surrender. They are members of this House, not only charged with the management of this impeachment, but partaking of a general trust, inseparable from the Commons of Great Britain in parliament assembled, one of whose principal functions and duties it is, to be observant of the courts of justice, and to take due care that none of them, from the lowest to the highest, shall pursue new courses unknown to the laws and constitution of this kingdom, or to equity, sound legal policy, or substantial justice. Your committee were not sent into Westminster Hall for the purpose of contributing in their persons, and under the authority of the House, to change the course or law of parliament, which had

continued unquestioned for at least four hundred years. Neither was it any part of their mission to suffer precedents to be established, with relation to the law and rule of evidence, which tended in their opinion to shut up for ever all the avenues to justice. They were not to consider a rule of evidence as a means of concealment. They were not, without a struggle, to suffer any subtleties to prevail, which would render a process in parliament, not the terror, but the protection, of all the fraud and violence arising from the abuse of British power in the East. Accordingly, your managers contended with all their might, as their predecessors in the same place had contended with more ability and learning, but not with more zeal and more firmness, against those dangerous innovations as they were successively introduced: they held themselves bound constantly to protest, and in one or two instances they did protest, in discourses of considerable length, against those private, and, for what they could find, unargued judicial opinions, which must, as they fear, introduce by degrees the miserable servitude which exists where the law is uncertain or unknown.

DEBATES ON EVIDENCE.

The chief debates at the bar, and the decisions of the judges, (which we find in all cases implicitly adopted, in all their extent, and without qualification, by the Lords,) turned upon *evidence*. Your committee, before the trial began, were apprized, by discourses which prudence did not permit them to neglect, that endeavours would be used to embarrass them in their proceedings by exceptions against evidence; that the judgments and opinions of the courts below would be resorted to on this subject; that there the rules of evidence were precise, rigorous, and inflexible; and that the counsel for the criminal would endeavour to introduce the same rules, with the same severity and exactness, into this trial. Your committee were fully assured, and were resolved strenuously to contend, that no doctrine or rule of law, much less the practice of any court, ought to have weight or authority in parliament, further than as such doctrine, rule, or practice is agreeable to the proceedings in parliament, or hath received the sanction of approved precedent there; or is founded on the immutable principles of substantial justice,

without which, your committee readily agrees, no practice in any court, high or low, is proper or fit to be maintained.

In this preference of the rules observed in the high court of parliament, preëminently superior to all the rest, there is no claim made, which the inferior courts do not make, each with regard to itself. It is well known, that the rules of proceedings in these courts vary, and some of them very essentially; yet the usage of each court is the law of the court, and it would be vain to object to any rule in any court, that it is not the rule of another court. For instance, as a general rule, the court of King's Bench, on trials by jury, cannot receive depositions, but must judge by testimony *vivâ voce*. The rule of the court of Chancery is not only not the same, but it is the reverse, and Lord Hardwicke ruled accordingly: "The constant and established proceedings of this court," said this great magistrate, "are on written evidence, like the proceedings on the civil and canon law. This is the course of the court, and the course of the court is the law of the court."—Atkyns, vol. i. p. 446.

Your managers were convinced, that one of the principal reasons, for which this cause was brought into parliament, was the danger that in inferior courts their rule would be formed naturally upon their ordinary experience, and the exigencies of the cases which in ordinary course came before them. This experience, and the exigencies of these cases, extend little further than the concerns of a people comparatively in a narrow vicinage—a people of the same or nearly the same language, religion, manners, laws, and habits.—With them an intercourse of every kind was easy.

These rules of law in most cases, and the practice of the courts in all, could not be easily applicable to a people separated from Great Britain by a very great part of the globe; separated by manners, by principles of religion, and of inveterate habits as strong as nature itself, still more than by the circumstance of local distance. Such confined and inapplicable rules would be convenient indeed to oppression, to extortion, bribery, and corruption, but ruinous to the people, whose protection is the true object of all tribunals, and of all their rules. Even English judges in India, who have been sufficiently tenacious of what they considered as the rules of English courts, were obliged, in many points, and particularly

with regard to evidence, to relax very considerably, as the civil and politic government has been obliged to do in several other cases, on account of insuperable difficulties arising from a great diversity of manners, and from what may be considered as a diversity, even in the very constitution of their minds: instances of which your committee will subjoin in a future Appendix.

Blackstone's Commentaries, Book IV. p. 258.

Another great cause why your committee conceived this House had chosen to proceed in the high court of parliament, was because the inferior courts were habituated, with very few exceptions, to try men for the abuse only of their individual and natural powers, which can extend but a little way. Before them, offences, whether of fraud or violence, or both, are, for much the greater part, charged upon persons of mean and obscure condition. Those unhappy persons are so far from being supported by men of rank and influence, that the whole weight and force of the community is directed against them. In this case, they are in general objects of protection as well as of punishment; and the course perhaps ought, as it is *commonly* said to be, not to suffer anything to be applied to their conviction beyond what the strictest rules will permit. But in the cause which your managers have in charge, the circumstances are the very reverse to what happens in the cases of mere personal delinquency, which come before the inferior courts. These courts have not before them persons who act, and who justify their acts, by the nature of a despotical and arbitrary power. The abuses, stated in our impeachment, are not those of mere individual, natural faculties, but the abuses of civil and political authority. The offence is that of one, who has carried with him in the perpetration of his crimes, whether of violence or of fraud, the whole force of the state;—who, in the perpetration and concealment of offences, has had the advantage of all the means and powers given to government for the detection and punishment of guilt, and for the protection of the people. The people themselves, on whose behalf the Commons of Great Britain take up this remedial and protecting prosecution, are naturally timid. Their spirits are broken by the arbitrary power usurped over them, and claimed by the delinquent as his law. They are ready to flatter the power

which they dread. They are apt to look for favour from their governors, by covering those vices in the predecessor, which they fear the successor may be disposed to imitate. They have reason to consider complaints as means not of redress, but of aggravation to their sufferings; and when they shall ultimately hear that the nature of the British laws, and the rules of its tribunals, are such as by no care or study either they, or even the Commons of Great Britain, who take up their cause, can comprehend, but are such as in effect and operation leave them unprotected, and render those who oppress them secure in their spoils, they must think still worse of British justice than of the arbitrary power of the Company's servants, which hath been exercised to their destruction. They will be for ever, what, for the greater part, they have hitherto been, inclined to compromise with the corruption of the magistrates, as a screen against that violence, from which the laws afford them no redress.

For these reasons, your committee did, and do, strongly contend, that the court of parliament ought to be open with great facility to the production of all evidence, except that, which the precedents of parliament teach them authoritatively to reject, or which hath no sort of natural aptitude directly or circumstantially to prove the case. They have been and are invariably of opinion, That the Lords ought to *enlarge* (*and not to contract*) *the rules of evidence, according to the nature and difficulties of the case,* for redress to the injured, for the detection of fraud; and, that they ought above all to prevent, what is the greatest dishonour to all laws, and to all tribunals—the failure of justice. To prevent the last of these evils, all courts in this and all countries have constantly made all their maxims and principles concerning testimony to conform; although such courts have been bound undoubtedly by stricter rules, both of form and of prescript cases, than the sovereign jurisdiction exercised by the Lords on the impeachment of the Commons ever has been, or ever ought to be. Therefore your committee doth totally reject any rules, by which the practice of any inferior court is affirmed as a directory guide to a higher, especially where the forms and the powers of the judicature are different, and the objects of judicial inquiry are not the same.

Your committee conceives that the trial of a cause is not in the arguments or disputations of the prosecutors and the counsel, but in the *evidence;* and that to refuse evidence is to refuse to hear the cause: nothing, therefore, but the most clear and weighty reasons ought to preclude its production. Your committee conceives that when evidence, on the face of it relevant, that is, connected with the party and the charge, was denied to be competent, *the burthen lay upon those who opposed it,* to set forth the authorities, whether of positive statute, known recognised maxims and principles of law, passages in an accredited institute, code, digest, or systematic treatise of laws, or some adjudged cases, wherein the courts have rejected evidence of that nature. No such thing ever (except in one instance, to which we shall hereafter speak) was produced at the bar, nor (that we know of) produced by the Lords in their debates, or by the judges in the opinions by them delivered. Therefore, for anything which as yet appears to your committee to the contrary, these responses and decisions were, in many of the points, not the determinations of any law whatsoever, but mere arbitrary decrees, to which we could not without solemn protestation submit.

Your committee, at an early period, and frequently since the commencement of this trial, have neglected no means of research, which might afford them information concerning these supposed strict and inflexible rules of proceeding, and of evidence, which appeared to them destructive of all the means and ends of justice:—and, first, they examined carefully the Rolls and Journals of the House of Lords, as also the printed trials of cases before that court.

Lords' Journ. vol. iv. p. 204. An. 1641.

Your committee finds but one instance, in the whole course of parliamentary impeachments, in which evidence offered by the Commons has been rejected on the plea of inadmissibility or incompetence. This was in the case of Lord Strafford's trial; when the copy of a warrant (the same not having any attestation to authenticate it as a true copy) was, on deliberation, not admitted; and your committee thinks, as the case stood, with reason.—But even in this one instance, the Lords seemed to show a marked anxiety not to narrow too much the admissibility of evidence, for they confined their determination "to this individual case," as the lord steward

Rush. Trial of Lord Strafford, p. 430.

reported their resolution; and he adds, "they conceive this to be no impediment or failure in the proceeding, because the truth and verity of it would depend on the first general power given to execute it, which they who manage the evidence for the Commons say they could prove."—Neither have objections to evidence offered by the prisoner been very frequently made, nor often allowed when made.—In the same case of Lord Strafford, two books produced by his lordship, without proof by whom they were written, were rejected (and on a clear principle) "as being private books, and no records." On both these occasions, the questions were determined by the Lords alone, without any resort to the opinions of the judges. In the impeachments of Lord Strafford, Dr. Sacheverell, and Lord Wintoun, no objection to evidence appears in the Lords' Journals to have been pressed, and not above one taken, which was on the part of the managers.

Lords' Journ. vol. iv. p. 210.

Several objections were indeed taken to evidence in Lord Macclesfield's trial. They were made on the part of the managers, except in two instances, where the objections were made by the witnesses themselves. They were all determined (those started by the managers in their favour) by the Lords themselves, without any reference to the judges. In the discussion of one of them, a question was stated for the judges concerning the law in a similar case upon an information in the court below; but it was set aside by the previous question.

Lords' Journ. vol. xxii. p. 536 to 546. An. 1725.

Lords' Journ. vol. xxii. p. 536 to 546. An. 1725.

On the impeachment of Lord Lovat, no more than one objection to evidence was taken by the managers, against which Lord Lovat's counsel were not permitted to argue. Three objections on the part of the prisoner were made to the evidence offered by the managers, but all without success. The instances of similar objections in parliamentary trials of Peers on indictments, are too few and too unimportant to require being particularized;—one that, in the case of Lord Warwick, has been already stated.

Lords' Journ. vol. xxviii. p. 63, 65. An. 1746.

The principles of these precedents do not in the least affect any case of evidence which your managers had to support. The paucity and inapplicability of instances of this

kind, convince your committee that the Lords have ever used some latitude and liberality in all the means of bringing information before them—nor is it easy to conceive, that as the Lords are, and of right ought to be, judges of law and fact, many cases should occur (except those where a personal *vivâ voce* witness is denied to be competent) in which a judge, possessing an entire judicial capacity, can determine by anticipation what is good evidence, and what not, before he has heard it. When he has heard it, of course he will judge what weight it is to have upon his mind, or whether it ought not entirely to be struck out of the proceedings.

Your committee, always protesting, as before, against the admission of any law, foreign or domestic, as of authority in parliament, further than as written reason, and the opinion of wise and informed men, has examined into the writers on the civil law, ancient and more recent, in order to discover what those rules of evidence, in any sort applicable to criminal cases, were, which were supposed to stand in the way of the trial of offences committed in India.

They find, that the term evidence, *evidentia*, from whence ours is taken, has a sense different in the Roman law from what it is understood to bear in the English jurisprudence. The term most nearly answering to it in the Roman, being *probatio*, proof; which, like the term *evidence*, is a generic term, including everything by which a doubtful matter may be rendered more certain to the judge; or, as Gilbert expresses it, every matter is evidence which amounts to the proof of the point in question.

Gilbert's Law of Evidence, p. 43.

On the general head of evidence or proof, your committee finds, that much has been written by persons learned in the Roman law, particularly in modern times; and that many attempts have been made to reduce to rules the principles of evidence or proof, a matter which by its very nature seems incapable of that simplicity, precision, and generality, which are necessary to supply the matter, or to give the form to a rule of law. Much learning has been employed on the doctrine of indications and presumptions, in their books; far more than is to be found in our law.—Very subtile disquisitions were made, on all matters of jurisprudence in the times of the classical civil law, by the followers of the Stoic school. In the modern school of the

Gravina, 84, 85.

same law, the same course was taken by Bartolus, Baldus, and the civilians who followed them, before the complete revival of literature. All the discussions to be found in those voluminous writings, furnish undoubtedly a useful exercise to the mind, by methodizing the various forms in which one set of facts, or collection of facts, or the qualities or demeanour of persons, reciprocally influence each other; and by this course of juridical discipline, they add to the readiness and sagacity of those who are called to plead or to judge. But as human affairs and human actions are not of a metaphysical nature, but the subject is concrete, complex, and moral, they cannot be subjected (without exceptions which reduce it almost to nothing) to any certain rule. Their rules with regard to competence were many and strict, and our lawyers have mentioned it to their reproach. "The civilians (it has been observed) differ in nothing more than admitting evidence; for they reject histriones, &c. and whole tribes of people." But this extreme rigour as to competency, rejected by our law, is not found to extend to the *genus* of evidence, but only to a particular species—personal witnesses. Indeed, after all their efforts to fix these things by positive and inflexible maxims, the best Roman lawyers in their best ages were obliged to confess, that every case of evidence rather formed its own rule, than that any rule could be adapted to every case: The best opinions, however, seem to have reduced the admissibility of witnesses to a few heads.—"For if," said Calistratus, in a passage preserved to us in the Digest, "the testimony is free from suspicion, either on account of the quality of the *person*, namely, that he is in a reputable situation; or for *cause*, that is to say, that the testimony given is not for reward, nor favour, nor for enmity, such a witness is admissible." This first description goes to *competence;* between which and *credit*, Lord Hardwicke justly says, the discrimination is very nice: the other part of the text shows their anxiety to reduce credibility itself to a fixed rule. It proceeds, therefore, "his sacred Majesty, Hadrian, issued a rescript to Vivius Varus, lieutenant of Cilicia, to this effect, That he who sits in judgment is the most capable of determining what credit is to be given to witnesses." The words of the letter of rescript are as

Id. 90, usque ad 100.

Atkyns, Rep. Omichund versus Barker, vol. i. p. 37.

follow: "You ought best to know what credit is to be given to witnesses,—who, and of what dignity, and of what estimation they are, whether they seem to deliver their evidence with simplicity and candour—whether they seem to bring a formed and premeditated discourse—or whether on the spot they give probable matter in answer to the questions that are put to them." And there remains a rescript of the same prince to Valerius Varus on the bringing out the credit of witnesses. This appears to go more to the *general* principles of evidence. It is in these words: "What evidence, and in what measure or degree, shall amount to proof in each case, can be defined in no manner whatsoever that is sufficiently certain. For, though not always, yet frequently, the truth of the affair may appear without any matter of public record.—In some cases, the number of the witnesses, in others, their dignity and authority, is to be weighed; in others, concurring public fame tends to confirm the credit of the evidence in question. This alone I am able, and in a few words, to give you as my determination, that you ought not too readily to bind yourself to try the cause upon any one description of evidence; but you are to estimate by your own discretion what you ought to credit, or what appears to you not to be established by proof sufficient."

Digest. L. XXII. part 5.

The modern writers on the civil law have likewise much matter on this subject, and have introduced a strictness, with regard to personal testimony, which our particular jurisprudence has not thought it at all proper to adopt. In others we have copied them more closely. They divide evidence into two parts, in which they do not differ from the ancients. 1st, What is evidence, or proof by itself? 2ndly, What is presumption, "which is a probable conjecture from a reference to something which, coming from marks and tokens ascertained, shall be taken for truth, until some other shall be adduced?" Again, they have laboured particularly to fix rules for presumptions, which they divide into, 1. Violent and necessary.—2. Probable.—3. and lastly, Slight and rash. But, finding that this head of presumptive evidence (which makes so large a part with them and with us in the trial of all causes, and particularly criminal causes) is extremely difficult to ascertain, either with regard to what shall be

considered as exclusively creating any of these three degrees of presumption, or what facts, and how proved,—and what marks and tokens may serve to establish them,—even those civilians, whose character it is to be subtle to a fault, have been obliged to abandon the task—and have fairly confessed, that the labours of writers to fix rules for these matters have been vain and fruitless. One of the most able of them has said, "That the doctors of the law have written nothing of value concerning presumptions; nor is the subject matter such as to be reduced within the prescribed limit of any certain rules. In truth, it is from the actual existing case, and from the circumstances of the persons, and of the business, that we ought (under the guidance of an incorrupt judgment of the mind, which is called an equitable discretion) to determine what presumptions or conjectural proofs are to be admitted as rational, or rejected as false, or on which the understanding can pronounce nothing, either the one way or the other."

Calvinus Voce præsumptio.

Bartolus.

It is certain, that whatever over-strictness is to be found in the older writers on this law with regard to evidence, it chiefly related to the mere competency of witnesses; yet even here the rigour of the Roman lawyers relaxed on the necessity of the case. Persons who kept houses of ill fame were with them incompetent witnesses: yet among the maxims of that law, the rule is well known of "*Testes lupanares in re lupanari.*"

In ordinary cases, they require two witnesses to prove a fact; and therefore they held, "that if there be but one witness, and no probable grounds of presumption of some kind, (*nulla argumenta,*) that one witness is by no means to be heard;" and it is not inelegantly said in that case, *Non jus deficit sed probatio,* "The failure is not in the law, but in the proof." But if other grounds of presumption appear, one witness is to be heard; "for it is not necessary that one crime should be established by one sort of proof only, as by witnesses, or by documents, or by presumptions; all the modes of evidence may be so conjoined, that where none of them alone would affect the prisoner, all the various concurrent proofs should overpower him, like a storm of hail." —This is held particularly true in cases where crimes are

secret, and detection difficult. The necessity of detecting and punishing such crimes superseded, in the soundest authors, this theoretic aim at perfection, and obliged technical science to submit to practical experience. *In re criminali*, said the rigourists, *probationes debent esse evidentes et luce meridianâ clariores;* and so undoubtedly it is in offences which admit such proof. But reflection taught them, that even their favourite rules of incompetence must give way to the exigencies of distributive justice. One of the best modern writers on the imperial criminal law, particularly as practised in Saxony, (Carpzovius,) says, "This alone I think it proper to remark, that even incompetent witnesses are sometimes admitted, if otherwise the truth cannot be got at; and this particularly in facts and crimes which are of difficult proof;"—and for this doctrine he cites Farinacius, Mascardus, and other eminent civilians who had written on evidence.—He proceeds afterwards—"However, this is to be taken with a caution, that the impossibility of otherwise discovering the truth, is not construed from hence, that other witnesses were not actually concerned, but that from the nature of the crime, or from regard had to the place and time, other witnesses could not be present." Many other passages from the same authority, and from others to a similar effect, might be added: We shall only remark shortly, that Gaill, a writer on the practice of that law the most frequently cited in our own courts, gives the rule more in the form of a maxim; "That the law is contented with such proof as *can* be made, if the subject *in its nature* is difficult of proof." And the same writer, in another passage, refers to another still more general maxim, (and a sound maxim it is,) that the power and means of proof ought not to be narrowed but enlarged, that the truth may not be concealed:—*Probationum facultas non angustari, sed ampliari debeat, ne veritas occultetur.*

Lib. II. Obs. 149.

Lib. I. Obs. 91, § 7.

On the whole, your committee can find nothing in the writings of the learned in this law, any more than they could discover anything in the law of parliament, to support any one of the determinations given by the judges, and adopted by the Lords, against the evidence which your committee offered, whether direct and positive, or merely (as for the

greater part it was) circumstantial, and produced as a ground to form legitimate presumption against the defendant: nor, if they were to admit (which they do not) this civil law to be of authority in furnishing any rule in an impeachment of the Commons, more than as it may occasionally furnish a principle of reason on a new or undetermined point, do they find any rule, or any principle, derived from that law, which could or ought to have made us keep back the evidence which we offered. On the contrary, we rather think those rules and principles to be in agreement with our conduct.

As to the canon law, your committee, finding it to have adopted the civil law with no very essential variation, does not feel it necessary to make any particular statement on that subject.

Your committee then came to examine into the authorities in the English law, both as it has prevailed for many years back, and as it has been recently received in our courts below. They found on the whole the rules rather less strict, more liberal, and less loaded with positive limitations, than in the Roman law. The origin of this latitude may perhaps be sought in this circumstance, which we know to have relaxed the rigour of the Roman law—courts in England do not judge, upon evidence, *secundum allegata et probata*, as in other countries and under other laws they do, but upon verdict. By a fiction of law, they consider the jury as supplying in some sense the place of testimony. One witness (and for that reason) is allowed sufficient to convict, in cases of felony, which in other laws is not permitted.

In ancient times it has happened to the law of England, (as in pleading, so in matter of evidence,) that a rigid strictness in the application of technical rules has been more observed than at present it is. In the more early ages, as the minds of the judges were in general less conversant in the affairs of the world, as the sphere of their jurisdiction was less extensive, and as the matters which came before them were of less variety and complexity, the rule being in general right, not so much inconvenience on the whole was found from a literal adherence to it, as might have arisen from an endeavour towards a liberal and equitable departure, for which further experience, and a more continued cultivation of equity as a science, had not then so fully prepared them.

—In those times, that judicial policy was not to be condemned. We find too, that, probably from the same cause, most of their doctrine leaned towards the restriction; and the old lawyers being bred, according to the then philosophy of the schools, in habits of great subtilty and refinement of distinction, and having once taken that bent, very great acuteness of mind was displayed in maintaining every rule, every maxim, every presumption of law creation, and every fiction of law, with a punctilious exactness; and this seems to have been the course which laws have taken in every nation.[1] It was probably from this rigour, and from a sense of its pressure, that, at an early period of our law, far more causes of criminal jurisdiction were carried into the House of Lords, and the council-board, where laymen were judges, than can or ought to be at present.

As the business of courts of equity became more enlarged, and more methodical; as magistrates, for a long series of years, presided in the court of Chancery, who were not bred to the common law; as commerce, with its advantages and its necessities, opened a communication more largely with other countries; as the law of nature and nations (always a part of the law of England) came to be cultivated; as an increasing empire; as new views and new combinations of things were opened; this antique rigour and over-done severity gave way to the accommodation of human concerns for which rules were made, and not human concerns made to bend to them.

Omichund v. Barker, Atk. 1. At length, Lord Hardwicke, in a case the most solemnly argued of any within the memory of man, with the aid of the greatest learning at the bar, and with the aid of all the learning on the bench, both bench and bar being then supplied with men of the first form, declared from the bench, and in concurrence with the rest of the judges, and with the most learned of the long robe, the able council on the side of the old restrictive principles making no re-

[1] *Antiqua jurisprudentia aspera quidem illa, tenebricosa, et tristis, non tam in æquitate, quam in verborum superstitione fundata, eaque Ciceronis ætatem fere attigit, mansitque annos circiter* 350. *Quæ hanc excepit, viguitque annos fere* 79, *superiori longe humanior; quippe quæ magis utilitate communi, quam potestate verborum, negotia moderaretur.*—Gravina, p. 86.

clamation—"That the judges and sages of the law have laid it down, that there is but ONE general rule of evidence—the best that the nature of the case will admit."—This, then, the master rule, that governs all the subordinate rules, does in reality subject itself and its own virtue and authority to the nature of the case; and leaves no rule at all of an independent, abstract, and substantive quality.—Sir Dudley Ryder, (then attorney-general, afterwards chief justice,) in his learned argument, observed—"It is extremely proper, that there should be *some* general rules in relation to evidence; but if exceptions are not allowed to them, it would be better to demolish all the general rules.—There is no general rule without exception that we know of, but this, that the best evidence shall be admitted, which the nature of the case will afford. I will show, that rules, as general as this, are broke in upon, for the sake of allowing evidence. There is no rule that seems more binding, than that a man shall not be admitted an evidence in his own case, and yet the statute of Hue and Cry is an exception. A man's books are allowed to be evidence, or, which is in substance the same, his servant's books, because the nature of the case requires it; as in the case of a brewer's servants.—Another general rule, that a wife cannot be witness against her husband, has been broke in upon in cases of treason: That the last words of a dying man are given in evidence, in the case of murder, is also an exception to the general rule, that a man may not be examined without oath." Such are the doctrines of this great lawyer.

Chief Justice Willes concurs with Lord Hardwicke as to dispensing with strict rules of evidence.—"Such evidence," he says, "is to be admitted as the *necessity* of the case will allow of; as, for instance, a marriage at Utrecht, certified under the seal of the minister there, and of the said town, and that they cohabited together as man and wife, was held to be sufficient proof that they were married."—This learned judge (commenting upon Lord Coke's doctrine, and Serjeant Hawkins's after him, that the oaths of Jews and Pagans were not to be taken) says, "That this notion, though advanced by so great a man, is contrary to religion, common sense, and common humanity, and I think the devils, to whom he has delivered them, could not have suggested anything worse."

—The chief justice, admitting Lord Coke to be a great lawyer, then proceeds in very strong terms, and with marks of contempt, to condemn "his narrow notions;" and he treats with as little respect or decorum the ancient authorities referred to in defence of such notions.

The principle of the departure from those rules is clearly fixed by Lord Hardwicke; he lays it down as follows: "The first ground judges have gone upon in departing from strict rules, is absolute strict necessity. 2ndly, A *presumed* necessity." Of the first he gives these instances; "in the case of writings subscribed by witnesses, if all are dead, the proof of one of their hands is sufficient to establish the deed. Where an original is lost, a copy may be admitted; if no copy, then a proof by witnesses who have *heard* the deed; and yet it is a thing law abhors, to admit the memory of man for evidence."—This enlargement through two stages of proof, both of them contrary to the rule of law, and both abhorrent from its principles, are by this great judge accumulated upon one another, and are admitted from *necessity*, to accommodate human affairs, and to prevent that, which courts are by every possible means instituted to prevent—A FAILURE OF JUSTICE. And this necessity is not confined within the strict limits of physical causes, but is more lax, and takes in *moral, and even presumed and argumentative necessity*, a necessity which is in fact nothing more than a great degree of expediency. The law creates a fictitious necessity against the rules of evidence in favour of the convenience of trade: An exception, which on a similar principle had before been admitted in the civil law, as to mercantile causes, in which the books of the party were received to give full effect to an insufficient degree of proof, called in the nicety of their distinctions a *semiplena probatio*.

Gaill, Lib. II. Obs. 20, § 3.

But to proceed with Lord Hardwicke;—he observes, that "a tradesman's books (that is, the acts of the party interested, himself) are admitted as evidence, not through *absolute necessity*, but by reason of a *presumption* of necessity *inferred* only from the nature of commerce. No rule," continued Lord Hardwicke, "can be more settled, than that testimony is not to be received but upon oath;" but he lays it down that an oath itself may be dispensed with. "There

is another instance," says he, "where the lawful oath may be dispensed with, namely, where our courts admit evidence for the Crown without oath."

In the same discussion, the chief baron (Parker) cited cases, in which all the rules of evidence had given way. "There is not a more general rule," says he, "than that hearsay cannot be admitted, nor husband and wife as witnesses against each other; and yet it is notorious that from necessity they have been allowed, not an absolute necessity, but a moral one."

It is further remarkable, in this judicial argument, that exceptions are allowed not only to rules of evidence, but that the rules of evidence themselves are not altogether the same, where the subject matter varies. The judges have, to facilitate justice and to favour commerce, even adopted the rules of foreign laws. They have taken for granted, and would not suffer to be questioned, the regularity and justice of the proceedings of foreign courts, and they have admitted them as evidence, not only of the fact of the decision, but of the right as to its legality: where there are foreign parties interested, and in "commercial matters, the rules of evidence are not quite the same as in other instances in courts of justice. The case of Hue and Cry, Brownlow, 47, a feme covert is not a lawful witness against her husband, except in cases of treason, but has been admitted in civil cases.[1] The testimony of a public notary is evidence by the law of France; contracts are made before a public notary, and no other witness necessary. I should think it would be no doubt at all, if it came in question here, whether this would be a valid contract; but a testimony from persons of that credit and reputation would be received as a very good proof in foreign transactions, and would authenticate the contract."—Chro. Chal. 365.

These cases show, that courts always govern themselves by these rules in cases of foreign transactions. To this principle Lord Hardwicke accords; and enlarging the rule of evidence by the nature of the subject, and the exigencies of

[1] N. B. In some criminal cases also, though not of treason, a husband is admitted to prove an assault upon his wife, for the king, ruled by Raymond, chief justice, Trin. 11th Geo. King versus Azire. And for various other exceptions, see Buller's Nisi Prius, 285, 287.

the case, he lays it down—"that it is a common and *natural* presumption, that persons of the Gentoo religion should be principally apprized of facts and transactions in their own country.—As the English have only a factory in this country, for it is in the empire of the Great Mogul, if we should admit this evidence, [Gentoo evidence on a Gentoo oath,] it would be agreeable to the genius of the law of England." For this he cites the proceedings of our court of Admiralty —and adopts the opinion of the author who states the precedent—"That this court will give credit to the sentence of the court of Admiralty in France, and take it to be according to right, and will not examine their proceedings; for it would be found very inconvenient if one kingdom should, by peculiar laws, correct the judgments and proceedings of another kingdom." Such is the genius of the law of England, that these two principles of the general moral necessities of things, and the nature of the case, overrule every other principle, even those rules which seem the very strongest. Chief Baron Parker, in answer to an objection made against the infidel deponent, "that the plaintiff ought to have shown that he could not have the evidence of Christians," says, "that repugnant to natural justice, in the statute of Hue and Cry, the robbed is admitted to be witness of the robbery, as a moral or presumed necessity is sufficient." The same learned magistrate, pursuing his argument in favour of liberality, in opening and enlarging the avenues to justice, does not admit "that the authority of one or two cases is valid against reason, equity, and convenience, the vital principles of the law." He cites Wells versus Williams, 1. Raymond 282, to show that the necessity of trade has mollified the too rigorous rules of the old law, in their restraint and discouragement of aliens. "A Jew may sue at *this* day, but *heretofore he could not*, for then they were looked upon as enemies, but now commerce has taught the world more humanity; and therefore held that an alien enemy, commorant here by the licence of the king, and under his protection, may maintain a debt upon a bond, though he did not come with safe-conduct." So far Parker, concurring with Raymond.—He proceeds, "It was objected by the defendant's counsel that this is a novelty, and that what never has been done ought not to be done." The answer is,

"The law of England is not confined to particular cases; but is much more governed by reason than by any one case whatever. The true rule is laid down by Lord Vaughan, fol. 37, 38: where the law, saith he, is *known and clear*, the judges must determine as the law is, without regard to the inequitableness or inconveniency. These defects, if they happen in the law, can only be remedied by parliament—but where the law is doubtful and not clear, the judges ought to interpret the law to be as is most consonant to equity, and what is least inconvenient."

These principles of equity, convenience, and natural reason, Lord Chief Justice Lee considered in the same ruling light, not only as guides in matter of interpretation concerning law in general, but, in particular, as controllers of the whole law of evidence, which being artificial, and made for convenience, is to be governed by that convenience for which it is made, and is to be wholly subservient to the stable principles of substantial justice. "I do apprehend," said that chief justice, "that the rules of evidence are to be considered as artificial rules, framed by men for convenience in courts of justice. This is a case that ought to be looked upon in that light; and I take it, that considering evidence in this way [viz. according to natural justice] is agreeable to the genius of the law of England."

The sentiments of Murray, then solicitor-general, afterwards Lord Mansfield, are of no small weight in themselves, and they are authority by being judicially adopted. His ideas go to the growing melioration of the law, by making its liberality keep pace with the demands of justice, and the actual concerns of the world; not restricting the infinitely diversified occasions of men, and the rules of natural justice, within artificial circumscriptions, but conforming our jurisprudence to the growth of our commerce and of our empire. This enlargement of our concerns, he appears, in the year 1744, almost to have foreseen, and he lived to behold it. "The arguments on the other side," said that great light of the law, (that is, arguments against admitting the testimony in question from the novelty of the case,) "prove nothing. Does it follow from thence, that no witnesses can be examined in a case that never specially existed before? or that an action cannot be brought in a case that never happened

before? Reason (being stated to be the first ground of all laws, by the author of the book called Doctor and Student) must determine the case. Therefore the only question is whether upon principles of reason, justice, and convenience this witness be admissible?" "Cases in law depend upon the *occasions* which gave rise to them. All occasions do not arise at once: Now a particular species of Indians appears; hereafter another species of Indians may arise. A statute can seldom take in all cases. Therefore the common law, that works itself pure by rules drawn from the fountain of justice, is for this reason superior to an act of parliament."

Omichund versus Barker, 1st Atkyns, ut supra.

From the period of this great judgment to the trial of Warren Hastings, Esquire, the law has gone on continually working itself pure (to use Lord Mansfield's expression) by rules drawn from the fountain of justice. "General rules," said the same person when he sat upon the bench, "are wisely established for attaining justice with ease, certainty, and despatch. But the great end of them being to do *justice*, the court will see that it be really obtained. The courts have been more liberal of late years in their determinations, and have more endeavoured to attend to the real justice of the case, than formerly." On another occasion, of a proposition for setting aside a verdict, he said, "This seems to be the true way to come at justice, and what we therefore ought to do; for the true text is *boni judicis est ampliari justitiam*, not *jurisdictionem*, as has been often cited." In conformity to this principle, the supposed rules of evidence have, in late times and judgments, instead of being drawn to a greater degree of strictness, been greatly relaxed.

Burrow, vol. i. p. 301. Rex v. Phillips, p. 302, 304, 306.

Wyndham v. Chetwynd, 1st Burrow, 414.

"All evidence is according to the subject matter to which it is applied. There is a great deal of difference between length of time that operates as a bar to a claim, and that which is used only by way of evidence.—For instance, length of time, merely as it affects evidence, may be left to the consideration of the jury, and the evidence itself credited or not, according to the inference that may be drawn one way or the other, from the circumstances of the case." In all cases of evidence, Lord

Cowper's Reports, 109. Mayor of Hull versus Horner.

Mansfield's maxim was to lean to admissibility, leaving the objections, which were made to competency, to go to credit, and to be weighed in the minds of the jury, after they had heard it.—In objections to wills, and to the testimony of witnesses to them, he thought "it clear that the judges ought to lean against objections raised on the ground of informality."

Abrahams v. Bunn, p. 2254. The whole case well worth reading.

Lord Hardwicke had before declared, with great truth, "That the boundaries of what goes to the credit, and what to the competency, are very nice, and that the latter may be carried too far; and in the same case he said, "that unless the objection appeared to him to carry a strong danger of perjury, and some apparent advantage might accrue to the witness, he was always inclined to let it go to his credit only in order to let in a proper light to the case, which would otherwise be shut out; and in a doubtful case he said it was generally his custom to admit the evidence, and give such directions to the jury as the nature of the case might require."

King v. Bray.

It is a known rule of evidence, that an interest in the matter to be supported by testimony, disqualifies a witness; yet Lord Mansfield held, "That nice objections to a remote interest, which could not be released, though they held in other cases, were not allowed to disqualify a witness to a will (as in the case of parishioners having a devise to the use of the poor of the parish for ever)." He went still further, and his doctrine tends so fully to settle the principle of departure from, or adherence to, rules of evidence, that your committee inserts part of the argument at large. "The disability of a witness from interest is very different from a positive incapacity. If a deed must be acknowledged before a judge or notary public, every other person is under a positive incapacity to authenticate it; but objections of interest are deductions from natural reason, and proceed upon a presumption of too great a bias in the mind of the witness, and the public utility of rejecting partial testimony. Presumptions stand no longer than till the contrary is proved. The presumption of bias may be taken off by showing that the witness has a great or a greater interest the other way, or that he has given it up. The presumption of

Wyndham v. Chetwynd.

public utility may be answered, by showing that it would be very inconvenient, under the particular circumstances, not to receive such testimony. Therefore, from the course of business, necessity, and other reasons of expedience, *numberless exceptions* are allowed to the *general* rule."

Lowe v. Joliffe, p. 366. These being the principles of later jurisprudence, the judges have suffered no positive rule of evidence to counteract those principles. They have even suffered subscribing witnesses to a will, which recites the soundness of mind in the testator, to be examined to prove his insanity, even when the court received evidence to overturn that testimony, and to destroy the credit of those witnesses. Five witnesses had attested a will and codicil. They were admitted to annul the will which they had themselves attested. Objections were taken to the competency of one of the witnesses in support of the will against the testimony of its subscribing witnesses. 1st, That the witness was an executor in trust, and so liable to actions. 2ndly, As having acted under the trust; whereby, if the will were set aside, he would be liable to answer for damages incurred by the sale of the deceased's chambers to a Mr. Frederick. Mr. Frederick offered to submit to a rule to release, for the sake of public justice. Those who maintained the objection, cited Sidersin, a reporter of much authority, 51, 115, and 1st Keble 134. Lord Mansfield, chief justice, did not controvert those authorities; but in the course of obtaining substantial justice, he treated both of them with equal contempt, though determined by judges of high reputation. His words are remarkable: "We do not *now* sit here to take our rules of evidence from Sidersin and Keble." He overruled the objection upon more recent authorities, which, though not in similar circumstances, he considered as within the reason. The court did not think it necessary that the witness should release, as he had offered to do. "It appeared on this trial (says Justice Blackstone) that a black conspiracy was formed to set aside the gentleman's will, without any foundation whatever." A prosecution against three of the testamentary witnesses was recommended, who were afterwards convicted of perjury. Had strict formalities, with regard to evidence, been adhered to in any part of this proceeding, that very

black conspiracy would have succeeded; and those black conspirators, instead of receiving the punishment of their crimes, would have enjoyed the reward of their perjury.

Lord Mansfield, it seems, had been misled, in a certain case, with regard to precedents. His opinion was against the reason and equity of the supposed practice, but he supposed himself not at liberty to give way to his own wishes and opinions. On discovering his error, he considered himself as freed from an intolerable burthen, and hastened to undo his former determination. "There are no precedents," said he with some exultation, "which stand in the way of our determining liberally, equitably, and according to the true intention of the parties." In the same case, his learned assessor, Justice Wilmot, felt the same sentiments. His expressions are remarkable: "Courts of law ought to concur with courts of equity, in the execution of those powers which are very convenient to be inserted in settlements; and they ought not to listen to nice distinctions that savour of the schools, but to be guided by true good sense and manly reason. After the statute of Uses, it is much to be lamented that the courts of common law had not adopted all the rules and maxims of the courts of equity. This would have prevented the absurdity of receiving costs in one court and paying them in another."

Burrow, 1147. Zouch ex dimiss. Woolston v. Woolston.

Your committee does not produce the doctrine of this particular case, as directly applicable to their charge, no more than several of the others here cited. We do not know on what precedents or principles the evidence proposed by us has been deemed inadmissible by the judges; therefore against the grounds of this rejection we find it difficult directly to oppose anything. These precedents and these doctrines are brought to show the general temper of the courts, their growing liberality, and the general tendency of all their reasonings and all their determinations to set aside all such technical subtleties, or formal rules, which might stand in the way of the discovery of truth and the attainment of justice.—The cases are adduced for the principles they contain.

The period of the cases and arguments we have cited, was that in which large and liberal principles of evidence were more declared, and more regularly brought into system. But

they had been gradually improving; and there are few principles of the later decisions which are not to be found in determinations on cases prior to the time we refer to. Not to overdo this matter, and yet to bring it with some degree of clearness before the House, your committee will refer but to a few authorities, and those, which seem most immediately to relate to the nature of the cause intrusted to them. In Michaelmas, 11 W. III., the King *v.* the Warden of the Fleet —A witness, who had really been a prisoner, and voluntarily suffered to escape, was produced to prove the escape. To the witness it was objected, that he had given a bond to be a true prisoner, which he had forfeited by escaping: besides, he had been retaken. His testimony was allowed; and by the court, among other things, it was said, In secret transactions, if any of the parties concerned are not to be, for the necessity of the third, admitted as evidence, it will be impossible to detect the practice; as in the cases of the statute of Hue and Cry, the party robbed shall be a witness to charge the hundred; and in the case of Cooke *v.* Watts in the Exchequer, where one who had been prejudiced by the will was admitted an evidence to prove it forged.[1] So in the case of King *v.* Harris, where a feme covert was admitted as a witness for ***fraudulently*** drawing her in, when sole, to give a warrant of attorney for confessing a judgment on an unlawful consideration, whereby execution was sued out against her husband; and Holt, chief justice, held, that a feme covert could not, by law, be a witness to convict one on an information; yet, in Lord Audley's case, it being a rape on her person, she was received to give evidence against him, and the court concurred with him, because it was the best evidence the nature of the thing would allow. This decision of Holt refers to others more early, and all on the same principle; and it is not of this day that this one great principle of eminent public expedience, this moral necessity,[2] "that crimes should not escape with impunity," has in all cases overborne all the common juridical rules of evidence—It has even prevailed over the first and most natural construction of acts of parliament, and that in matters of so penal a nature as high treason. It is known that sta-

1st Sidersin, p. 431.

[1] In this single point Holt did not concur with the rest of the judges.

[2] *Interest Reipublicæ ut maleficia ne remaneant impunita.*

tutes made, not to open and enlarge, but on fair grounds, to straiten proofs, require two witnesses in cases of high treason. So it was understood without dispute, and without distinction, until the argument of a case in the high court of justice, during the usurpation. It was the case of the presbyterian minister, Love, tried for high treason against the commonwealth, in an attempt to restore the king. In this trial, it was contended for and admitted, that one witness to one overt act, and one to another overt act of the same treason, ought to be deemed sufficient. This precedent, though furnished in times from which precedents were cautiously drawn, was received as authority throughout the whole reign of Charles the Second. It was equally followed after the Revolution; and at this day it is undoubted law. It is not so from the natural or technical rules of construction of the act of parliament, but from the principles of juridical policy. All the judges who have ruled it, all the writers of credit who have written upon it, assign this reason, and this only, —That treasons being plotted in secrecy, could in few cases be otherwise brought to punishment.

Love's Trial. State Trials, vol. ii. p. 144, 171—173, and 177; and Foster's Crown Law, p. 235.

Burrow, 815. Copendale v. Brigden.

The same principle of policy has dictated a principle of relaxation, with regard to severe rules of evidence, in all cases similar, though of a lower order in the scale of criminality. It is against fundamental maxims, that an accomplice should be admitted as a witness.—But accomplices are admitted from the policy of justice, otherwise confederacies of crime could not be dissolved.

There is no rule more solid, than that a man shall not entitle himself to profit by his own testimony. But an informer, in case of highway robbery, may obtain forty pounds to his own profit by his own evidence: this is not in consequence of positive provision in the act of parliament—it is a provision of policy, lest the purpose of the act should be defeated.

Now, if policy has dictated this very large construction of an act of parliament, concerning high treason; if the same policy has dictated exceptions to the clearest and broadest rules of evidence, in other highly penal causes; and if all this latitude is taken concerning matters for the greater part

within our insular bounds;—your committee could not, with safety to the larger and more remedial justice of the law of parliament, admit any rules or pretended rules, uncorrected and uncontrolled by circumstances, to prevail in a trial, which regarded offences of a nature difficult of detection, and committed far from the sphere of the ordinary practice of our courts.

If anything of an over-formal strictness is introduced into the trial of Warren Hastings, Esquire, it does not seem to be copied from the decisions of these tribunals. It is with great satisfaction your committee has found, that the reproach of "disgraceful subtleties," inferior rules of evidence, which prevent the discovery of truth, of forms, and modes of proceeding, which stand in the way of that justice, the forwarding of which is the sole rational object of their invention, cannot fairly be imputed to the common law of England, or to the ordinary practice of the courts below.

CIRCUMSTANTIAL EVIDENCE, &c.

The rules of evidence in civil and in criminal cases, in law and in equity, being only reason methodized, are certainly the same. Your committee however finds, that the far greater part of the law of evidence to be found in our books, turns upon questions relative to civil concerns. Civil cases regard property: Now, although property itself is not, yet almost everything concerning property, and all its modifications, is, of artificial contrivance. The rules concerning it become more positive, as connected with positive institution. The legislator therefore always, the jurist frequently, may ordain certain methods, by which alone they will suffer such matters to be known and established; because, their very essence, for the greater part, depends on the arbitrary conventions of men. Men act on them with all the power of a Creator over his creature. They make fictions of law and presumptions of law (*presumptiones juris et de jure*) according to their ideas of utility—and against those fictions, and against presumptions so created, they do and may reject all evidence. However, even in these cases, there is some restraint. Lord Mansfield has let in a liberal spirit against the fictions of law themselves; and he declared that he would do, what in one case

Burrow, 815. Copendale v. Brigden.

he actually did, and most wisely—that he would admit evidence against a fiction of law, when the fiction militated against the policy on which it was made.

Thus it is with things which owe their existence to men: But, where the subject is of a physical nature, or of a moral nature, independent of their conventions, men have no other reasonable authority, than to register and digest the results of experience and observation. Crimes are the actions of physical beings, with an evil intention abusing their physical powers against justice, and to the detriment of society; in this case, fictions of law and artificial presumptions (*juris et jure*) have little or no place. The presumptions which belong to criminal cases are those natural and popular presumptions which are only observations turned into maxims, like adages and apothegms, and are admitted (when their grounds are established) in the place of proof, where better is wanting, but are to be always overturned by counter-proof.

These presumptions mostly go to the *intention*. In all criminal cases, the crime (except where the law itself implies malice) consists rather in the intention than the action. Now, the intention is proved but by two ways: either, 1st, by confession—this first case is rare but simple; 2ndly, by circumstantial proof—this is difficult, and requires care and pains. The connexion of the intention and the circumstances is plainly of such a nature, as more to depend on the sagacity of the observer than on the excellence of any rule. The pains taken by the civilians on that subject have not been very fruitful; and the English law writers have, perhaps, as wisely, in a manner abandoned the pursuit. In truth, it seems a wild attempt to lay down any rule for the proof of intention by circumstantial evidence; all the acts of the party; all things that explain or throw light on these acts; all the acts of others relative to the affair that come to his knowledge, and may influence him; his friendships and enmities, his promises, his threats, the truth of his discourses, the falsehood of his apologies, pretences, and explanations; his looks, his speech; his silence where he was called to speak; everything which tends to establish the connexion between all these particulars;—every circumstance, precedent, concomitant, and subsequent, become parts of circumstantial evidence. These are in their nature infinite, and

cannot be comprehended within any rule, or brought under any classification.

Now, as the force of that presumptive and conjectural proof rarely, if ever, depends on one fact only, but is collected from the number and accumulation of circumstances concurrent in one point, we do not find an instance, until this trial of Warren Hastings, Esquire, (which has produced many novelties,) that attempts have been made by any court to call on the prosecutor for an account of the purpose for which he means to produce each particle of this circumstantial evidence, to take up the circumstances one by one, to prejudge the efficacy of each matter separately, in proving the point; and thus to break to pieces and to garble those facts, upon the multitude of which, their combination, and the relation of all their component parts to each other, and to the culprit, the whole force and virtue of this evidence depends. To do anything which can destroy this collective effect, is to deny circumstantial evidence.

Your committee too cannot but express their surprise, at the particular period of the present trial when the attempts to which we have alluded first began to be made. The two first great branches of the accusation of this House against Warren Hastings, Esquire, relate to public and notorious acts, capable of direct proof; such as the expulsion of Cheit Sing, with its consequences on the province of Benares, and the seizure of the treasures and jaghires of the Begums of Oude. Yet, in the proof of those crimes, your committee cannot justly complain, that we were very narrowly circumscribed in the production of much circumstantial as well as positive evidence. We did not find any serious resistance on this head, till we came to make good our charges of secret crimes; crimes of a class and description, in the proof of which, all judges of all countries have found it necessary to relax almost all their rules of competency; such crimes as peculation, pecuniary frauds, extortion, and bribery. Eight out of nine of the questions put to the judges by the Lords, in the first stage of the prosecution, related to circumstances offered in proof of these secret crimes.

Much industry and art have been used, among the illiterate and unexperienced, to throw imputations on this prosecution, and its conduct, because so great a proportion of the evi-

dence offered on this trial (especially on the latter charges) has been circumstantial. Against the prejudices of the ignorant your committee opposes the judgment of the learned. It is known to them that, when this proof is in its greatest perfection, that is, when it is most abundant in circumstances, it is much superior to positive proof; and for this we have the authority of the learned judge who presided at the trial of Captain Donellan:—"On the part of the prosecution, a great deal of evidence has been laid before you. It is *all* circumstantial evidence, and in its nature it must be so; for, in cases of this sort, no man is weak enough to commit the act in the presence of other persons, or to suffer them to see what he does at the time; and therefore it can only be made out by circumstances, either before the committing of the act, at the time when it was committed, or subsequent to it; and a presumption, which necessarily arises from circumstances, is very often more convincing and more satisfactory than any other kind of evidence, because it is not within the reach and compass of human abilities to invent a train of circumstances, which shall be so connected together as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of these circumstances. But if the circumstances are such as, when laid together, bring conviction to your minds, it is then fully equal, if not, as I told you before, *more* convincing than positive evidence." In the trial of Donellan no such selection was used as we have lately experienced; no limitation to the production of every matter, before, at, and after the fact charged. The trial was (as we conceive) rightly conducted by the learned judge—because secret crimes, such as secret assassination, poisoning, bribery, peculation, and extortion (the three last of which this House has charged upon Mr. Hastings) can very rarely be proved in any other way. That way of proof is made to give satisfaction to a searching, equitable, and intelligent mind; and there must not be a failure of justice. Lord Mansfield has said, that he did not know a case in which proof might not be supplied. Vide supra.

Your committee has resorted to the trial of Donellan; and they have, and do much rely upon it, first, on account of the known learning and ability of the judge who tried the cause,

and the particular attention he has paid to the subject of evidence, which forms a book in his treatise on *Nisi Prius*. Next, because, as the trial went *wholly* on circumstantial evidence, the proceedings in it furnish some of the most complete and the fullest examples on that subject. Thirdly, because the case is recent; and the law cannot be supposed to be materially altered since the time of that event.

Comparing the proceedings on that trial, and the doctrines from the bench, with the doctrines we have heard from the woolsack, your committee cannot comprehend how they can be reconciled. For the Lords compelled the managers to declare for what purpose they produced each separate member of their circumstantial evidence; a thing, as we conceive, not usual, and particularly not observed in the trial of Donellan. We have observed in that trial, and in most others to which we have had occasion to resort, that the prosecutor is suffered to proceed narratively and historically, without interruption. If, indeed, it appears on the face of the narration, that what is represented to have been said, written, or done, did not come to the knowledge of the prisoner, a question sometimes, but rarely, has been asked, whether the prisoner could be affected with the knowledge of it. When a connexion with the person of the prisoner has been in any way shown, or even promised to be shown, the evidence is allowed to go on without further opposition. The sending of a sealed letter, the receipt of a sealed letter, inferred from the delivery to the prisoner's servant; the bare possession of a paper written by any other person, on the presumption that the contents of such letters, or such paper, were known to the prisoner; and the being present when anything was said or done, on the presumption of his seeing or hearing what passed, have been respectively ruled to be sufficient. If, on the other hand, no circumstance of connexion has been proved, the judge, in summing up, has directed the jury to pay no regard to a letter or conversation, the proof of which has so failed —a course much less liable to inconvenience, where the same persons decide both the law and the fact.

Girdwood's Case. Leach, p. 128. Gordon's Case. Ibid. p. 245. Lord Preston's Case. St. Tr. iv. p. 439. Layer's Case. St. Tr. vi. p. 279. Foster's Crown Law, p. 198.

Canning's Trial. St. Tr. x. p. 263, 270.

To illustrate the difficulties to which your committee was subjected on this head, we think it sufficient to submit to the House (reserving a more full discussion of this important point to another occasion) the following short statement of an incident which occurred in this trial.

Trial of the Duchess of Kingston. St. Tr. xi. p. 244. Trial of Huggins. St. Tr. ix. p. 119, 120, 135.

By an express order of the court of directors, (to which by the express words of the act of parliament, under which he held his office, he was ordered to yield obedience,) Mr. Hastings and his colleagues were directed to make an inquiry into all offences of bribery and corruption in office.—On the 11th of March a charge in writing of bribery and corruption in office was brought against himself. On the 13th of the same month, the accuser, a man of high rank, the Rajah Nundcomar, appears personally before the council, to make good his charge against Mr. Hastings before his own face. Mr. Hastings thereon fell into a very intemperate heat, obstinately refused to be present at the examination, attempted to dissolve the council, and contumaciously retired from it. Three of the other members, a majority of the council, in execution of their duty, and in obedience to the orders received under the act of parliament, proceeded to take the evidence, which is very minute and particular, and was entered in the records of the council by the regular official secretary. It was afterwards read in Mr. Hastings's own presence, and by him transmitted under his own signature to the court of directors. A separate letter was also written by him, about the same time, desiring, on his part, that in any inquiry into his conduct, "not a single word should escape observation." This proceeding in the council, your committee, in its natural order, and in a narrative chain of circumstantial proof, offered in evidence.—It was not permitted to be read—and on the 20th and 21st of May, 1789, we were told, from the woolsack, "that when a paper is not evidence by itself," (such this part of the consultation it seems was reputed,) "a party who wishes to introduce a paper of that kind is called upon not only to state, but to make out on proof, the whole of the grounds upon which he proceeds to make that paper proper evidence.—That the evidence that is produced must be *the demeanour* of the party respecting that paper: and it is the connexion

between them, *as material to the charge depending*, that will enable them to be produced."

Your committee observes, that this was not a paper *foreign* to the prisoner, and sent to him *as a letter*, the receipt of which, and his conduct thereon, were to be brought home to him, to infer his guilt from his demeanour. It was an office document of his own department, concerning himself, and kept by officers of his own, and by himself transmitted, as we have said, to the court of directors. Its proof was in the record. The charge made against him, and his demeanour on being acquainted with it, were not in separate evidence. They all lay together, and composed a connected narrative of the business, authenticated by himself.

In this case it seems to your committee extremely irregular and preposterous to demand previous and extraneous proofs of the demeanour of the party respecting the paper, and the connexion between them, as *material to the charge* depending; for this would be to try what the effect and operation of the evidence would be on the issue of the cause, before its production.

The doctrine so laid down, demands that every several circumstance should in itself be conclusive, or at least should afford a violent presumption; it must, we were told, without question, be material to the charge depending: but, as we conceive, its materiality, more or less, is not in the first instance to be established. To make it admissible, it is enough to give proof, or to raise a legal inference, of its connexion both with the charge depending, and the person of the party charged, where it does not appear on the face of the evidence offered. Besides, by this new doctrine, the materiality required to be shown must be decided from a consideration, not of the whole circumstance, but, in truth, of one half of the circumstance of a demeanour, unconnected with, and unexplained by, that on which it arose, though the connexion between the demeanour of the party and the paper is that which must be shown to be material. Your committee, after all they have heard, is yet to learn how the full force and effect of any demeanour, as evidence of guilt or innocence, can be known, unless it be also fully known to what that demeanour applied; unless when a person did or said anything, it be

known, not generally and abstractedly, that a paper was read to him, but particularly and specifically what were the contents of that paper: Whether they were matters lightly or weightily alleged; within the power of the party accused to have confuted on the spot, if false; or such as, though he might have denied, he could not instantly have disproved. The doctrine appeared, and still appears, to your committee to be totally abhorrent from the genius of circumstantial evidence, and mischievously subversive of its use. We did, however, offer that extraneous proof which was demanded of us; but it was refused, as well as the office document.

Your committee thought themselves the more bound to contend for every mode of evidence *to the intention;* because in many of the cases the gross fact was admitted, and the prisoner and his counsel set up pretences of public necessity and public service for his justification. No way lay open for rebutting this justification, but by bringing out all the circumstances attendant on the transaction.

ORDER AND TIME OF PRODUCING EVIDENCE.

Your committee found great impediment in the production of evidence, not only on account of the general doctrines supposed to exist concerning its inadmissibility, drawn from its own alleged natural incompetency, or from its inapplicability under the pleading of the impeachment of this House; but also from the mode of proceeding in bringing it forward. Here evidence which we thought necessary to the elucidation of the cause was not suffered, upon the supposed rules of *examination in chief, and cross examination*—and on supposed rules, forming a distinction between evidence *originally* produced on the charge, and evidence offered on the *reply*.

On all these your committee observes in general, that if the rules, which respect the substance of the evidence, are (as the great lawyers on whose authority we stand assert they are) no more than rules of convenience, much more are those subordinate rules, which regard the order, the manner, and the time of the arrangement. These are purely arbitrary; without the least reference to any fixed principle in the nature of things, or to any settled maxim of jurisprudence, and consequently are variable at every instant, as the conveniences of the cause may require.

We admit, that in the order of mere arrangement there is a difference between examination of witnesses in chief, and cross examination, and that in general these several parts are properly cast, according to the situation of the parties in the cause; but there neither is nor can be any precise rule to discriminate the exact bounds between examination and cross examination. So, as to time, there is necessarily some limit, but a limit hard to fix: The only one which can be fixed with any tolerable degree of precision, is, when the judge, after fully hearing all parties, is to consider of his verdict or his sentence. Whilst the cause continues under hearing in any shape, or in any stage of the process, it is the duty of the judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves, through negligence, ignorance, or corrupt collusion, should not bring it forward. A judge is not placed in that high situation merely as a passive instrument of parties: He has a duty of his own, independent of them, and that duty is to investigate the truth. There may be no prosecutor.—In our law a permanent prosecutor is not of necessity. The crown prosecutor in criminal cases is a grand jury; and this is dissolved instantly on its findings and its presentments. But if no prosecutor appears, (and it has happened more than once,) the court is obliged, through its officer the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the judge is to see it done effectually, and to act his own part in it; and this as long as evidence shall be offered within the time which the mode of trial will admit.

Your committee is of opinion, that if it has happened that witnesses or other kinds of evidence have not been frequently produced after the closing of the prisoner's defence, or such evidence has not been in reply given, it has happened from the peculiar nature of our common judicial proceedings, in which all the matter of evidence must be presented, whilst the bodily force and the memory, or other mental faculties of men, can hold out. This does not exceed the compass of one natural day, or thereabouts; during that short space of time, new evidence very rarely occurs for production by any of the parties; because the nature of men, joined to the nature of the tribunals, and of the mode of trial at common law, (good and useful on the whole,)

prescribe limits which the mere principles of justice would of themselves never fix.

But in other courts, such as the court of Chancery, the courts of Admiralty Jurisdiction, (except in prize causes under the act of parliament,) and in the Ecclesiastical courts, wherein the trial is not by an enclosed jury, in all those courts such strait limits are not of course necessary: The cause is continued by many adjournments; as long as the trial lasts, new witnesses are examined, (even after the regular stage,) for either party, on a special application to the sound discretion of the court, when the evidence offered is newly come to the knowledge or power of the party, and appears on the face of it to be material in the cause. *Even after hearing*, new witnesses have been examined, or former witnesses re-examined, not as the right of the parties, but *ad informandam conscientiam judicis*. All these things are not unfrequently in some, if not in all, of these courts, and perfectly known to the judges of Westminster Hall, who cannot be supposed ignorant of the practice of the court of Chancery; and who sit to try appeals from the Admiralty and Ecclesiastical courts as delegates.

Harrison's Practice of Chancery, vol. ii. p. 46. 1 ch. ca. 228. 1 ch. ca. 25. Oughton, Tit. 81, 82, 83. D. Tit. 116; Viner, Tit. Evidence, (P. a.)

But as criminal prosecutions, according to the forms of the civil and canon law, are neither many nor important in any court of this part of the kingdom, your committee thinks it right to state the undisputed principle of the imperial law, from the great writer on this subject before cited by us;—from Carpzovius. He says, "that a doubt has arisen whether evidence being once given in a trial on a public prosecution, (*in processu inquisitorio*,) and the witnesses being examined, it may be allowed to form other and new articles, and to produce new witnesses." Your committee must here observe, that the *processus inquisitorius* is that proceeding in which the prosecution is carried on in the name of the judge acting *ex officio;* from that duty of his office which is called the *nobile officium judicis*. For the judge under the imperial law possesses both those powers, the inquisitorial and the judicial, which in the high court of parliament are more aptly divided and exercised by the different Houses; and in this kind of process the House will see that Carpzovius couples the pro-

Carpz. Pract. Saxon. Crimin. Part. III. Quest. 114. No. 13.

duction of new witnesses and the forming of new articles (the undoubted privilege of the Commons) as intimately and necessarily connected. He then proceeds to solve the doubt —"Certainly (says he) there are authors who deny that, after publication of the depositions, any new witnesses and proofs that can affect the prisoner ought to be received, which (says he) is true in a case where a private prosecutor has intervened, who produces the witnesses. But if the judge proceeds by way of inquisition *ex officio*, then, even after the completion of the examination of witnesses against the prisoner, new witnesses may be received and examined; and on new grounds of suspicion arising, new articles may be formed according to the common opinion of the doctors; and as it is the most generally received, so it is most agreeable to reason." And in another chapter, relative to the ordinary criminal process by a private prosecutor, he lays it down, on the authority of Angelus, Bartolus, and others, that after the right of the party prosecuting is expired, the judge taking up the matter *ex officio* may direct new witnesses and new proofs, even after publication. Other passages from the same writer, and from others, might be added; but your committee trusts that what they have produced is sufficient to show the general principles of the imperial criminal law.

Carpz. Pract. Saxon. Part. III. Quest. 106. No. 89.

The modes of proceeding in the high court of parliament bear a much greater resemblance to the course of the court of Chancery, the Admiralty, and Ecclesiastical courts, (which are the king's courts too, and their law the law of the land,) than to those of the common law.

The accusation is brought into parliament at this very day by *exhibiting articles*; which, your committee is informed, is the regular mode of commencing a criminal prosecution, where the office of the judge is promoted in the civil and canon law courts of this country. The answer, again, is usually specific, both to the fact and the law alleged in each particular article, which is agreeable to the proceeding of the civil law, and not of the common law.

Anciently the resemblance was much nearer and stronger. Selden, who was himself a great ornament of the common law, and who was personally engaged in most of the impeachments of his time, has written expressly on the judicature in

parliament. In his fourth chapter, entitled, *Of Witnesses*, he lays down the practice of his time, as well as of ancient times, with respect to the proof by examination: and it is clearly a practice more similar to that of the civil than the common law. "The practice at this day (says he) is to swear the witnesses in open House, and then to examine them there, *or at a committee*, either upon *interrogatories* agreed upon in the House, or such as the committee in their discretion shall demand—thus it was in ancient times, as shall appear by the precedents, so many as they are, they being very sparing to record those ceremonies, which I shall briefly recite, I then add those of later times."

Accordingly, in times so late as those of the trial of Lord Middlesex, upon an impeachment of the Commons, the whole course of the proceeding, especially in the mode of adducing the evidence, was in a manner the same as in the civil law: Depositions were taken, and publication regularly passed; and on the trial of Lord Strafford, both modes pointed out by Selden seem to have been indifferently used. 22 Jac. I. 1624.

It follows, therefore, that this high court (bound by none of their rules) has a liberty to adopt the methods of any of the legal courts of the kingdom at its discretion; and in *sound* discretion it ought to adopt those which bear the nearest resemblance to its own constitution, to its own procedure, and to its exigencies in the promotion of justice. There are conveniencies and inconveniencies both in the shorter and the longer mode of trial. But to bring the methods observed (if such are in fact observed) in the former, only from necessity, into the latter, by choice, is to load it with the inconveniency of both, without the advantages of either. The chief benefit of any process, which admits of adjournments, is, that it may afford means of fuller information and more mature deliberation.—If neither of the parties have a strict right to it, yet the court or the jury, as the case may be, ought to demand it.

Your committee is of opinion, that all rules relative to laches or neglects in a party to the suit, which may cause nonsuit on the one hand, or judgment by default on the other, all things, which cause the party *cadere in jure*, ought not to be adhered to in the utmost rigour, even in civil cases;

but still less ought that spirit, which takes advantage of lapses and failures, on either part, to be suffered to govern in causes criminal. "Judges ought to lean against every attempt to *nonsuit* a plaintiff on objections which have no relation to the real merits. It is unconscionable in a defendant to take advantage of the *apices litigandi*;—against such objections, every possible presumption ought to be made which ingenuity can suggest. How disgraceful would it be to the administration of justice to allow chicane to obstruct right!" This observation of Lord Mansfield applies equally to every means by which indirectly, as well as directly, the cause may fail, upon any other principles than those of its merits. He thinks that all the resources of ingenuity ought to be employed to baffle chicane, not to support it. The case in which Lord Mansfield has delivered this sentiment is merely a civil case. In civil causes of *meum et tuum*, it imports little to the commonwealth whether *Titus* or *Mœvius* profits of a legacy; or whether *John a Nokes* or *John a Stiles* is seised of the manor of *Dale*. For which reason, in many cases, the private interests of men are left by courts to suffer by their own neglects, and their own want of vigilance, as their fortunes are permitted to suffer from the same causes in all the concerns of common life. But in crimes where the prosecution is on the part of the public, (as all criminal prosecutions are, except appeals,) the public prosecutor ought not to be considered as a plaintiff in a cause of *meum et tuum*; nor the prisoner, in such a cause, as a common defendant. In such a cause the state itself is highly concerned in the event: On the other hand, the prisoner may lose life, which all the wealth and power of all the states in the world cannot restore to him. Undoubtedly the state ought not to be weighed against justice; but it would be dreadful indeed if causes of such importance should be sacrificed to petty regulations, of mere secondary convenience, not at all adapted to such concerns, nor even made with a view to their existence. Your committee readily adopts the opinion of the learned *Ryder*, that it would be better if there were no such rules, than that there should be no exceptions to them. Lord

Morris v. Pugh and others. Burrow, p. 1243. See also Burrow, 4. Dickson v. Fisher. Alder v. Chip. Grey v. Smythies. Blackstone's Reports. N. B. All from the same judge, and proceeding on the same principle.

Hardwicke declared very properly, in the case of the Earl of Chesterfield against Sir Abraham Janson, "That political arguments, in the fullest sense of the word, as they concerned the government of a nation, must be, and always have been, of great weight in the consideration of this court. Though there be no *dolus malus* in contracts, with regard to other persons, yet if the rest of mankind are concerned as well as the parties, it may be properly said, it regards the public utility." Lord Hardwicke laid this down in a cause of *meum et tuum*, between party and party, where the public was concerned only remotely and in the example: not, as in this prosecution, when the political arguments are infinitely stronger, the crime relating, and in the most eminent degree relating, to the public.

Atkyns's Reports, vol. i. Chesterfield v. Janson.

One case has happened since the time which is limited by the order of the House for this report: It is so very important, that we think ourselves justified in submitting it to the House without delay. Your committee, on the supposed rules here alluded to, has been prevented from examining (as of right) a witness of importance in the case, and one on whose supposed knowledge of his most hidden transactions, the prisoner had himself, in all stages of this business, as the House well knows, endeavoured to raise presumptions in favour of his cause. Indeed it was his principal, if not only, justification, as to the *intention*, in many different acts of corruption charged upon him.—The witness to whom we allude is Mr. Larkins. This witness came from India after your committee had closed the evidence of this House, in chief; and could not be produced before the time of the reply. Your committee was not suffered to examine him; not, as they could find, on objections to the particular question, as improper, but upon some or other of the general grounds (as they believe) on which Mr. Hastings resisted any evidence from him. The party, after having resisted his production, on the next sitting day admitted him; and by consent he was examined: Your committee entered a protest on their minutes in favour of their right. Your committee contended, and do contend, that by the law of parliament, whilst the trial lasts, they have full right to call new evidence, as the circumstances may afford, and the

posture of the cause may demand it. This right seems to have been asserted by the managers for the Commons, in the case of Lord Stafford—32 Cha. II. The managers, in that case, claimed it as the right of the Commons to produce witnesses for the purpose of fortifying their former evidence.—Their claim was admitted by the court. It is an adjudged case in the law of parliament. Your committee is well aware, that the notorious perjury and infamy of the witnesses in the trial of Lord Stafford, has been used to throw a shade of doubt and suspicion on all that was transacted on that occasion. But there is no force in such an objection. Your committee has no concern in the defence of these witnesses; nor of the Lords who found their verdict on such testimony; nor of the morality of those who produced it. Much may be said to palliate errors on the part of the prosecutors and judges, from the heat of the times, arising from the great interest then agitated. But it is plain, there may be perjury in witnesses, or even conspiracy unjustly to prosecute, without the least doubt of the legality and regularity of the proceedings in any part. This is too obvious and too common to need argument or illustration. The proceeding in Lord Stafford's case never has, for a hundred and fourteen years, either in the warm controversies of parties, or in the cool disquisitions of lawyers or historians, been questioned. The perjury of the witnesses has been more doubted at some periods, than the regularity of the process has been at any period. The learned lawyer who led for the Commons in that impeachment (Serjeant Maynard) had, near forty years before, taken a forward part in the great cause of the impeachment of Lord Strafford; and was, perhaps, of all men then in England, the most conversant in the law and usage of parliament. Jones was one of the ablest lawyers of his age. His colleagues were eminent men.

State Trials, vol. iii. p. 170.

In the trial of Lord Strafford, (which has attracted the attention of history more than any other, on account of the importance of the cause itself, the skill and learning of the prosecutors, and the eminent abilities of the prisoner,) after the prosecutors for the Commons had gone through their evidence on the articles; after the prisoner had also made his defence, either upon each severally, or upon each body of

articles as they had been collected into one; and the managers had, in the same manner, replied; when previous to the general concluding reply of the prosecutors, the time of the general summing up (or re-collection as it was called) of the whole evidence on the part of Lord Strafford arrived, the managers produced new evidence. Your committee wishes to call the particular attention of the House to this case, as the contest between the parties did very nearly resemble the present; but, principally, because the sense of the Lords on the law of parliament, in its proceedings with regard to the reception of evidence, is there distinctly laid down: So is the report of the judges relative to the usage of the courts below, full of equity and reason, and in perfect conformity with the right for which we contended in favour of the public, and in favour of the court of Peers itself. The matter is as follows. Your committee gives it at large:

"After this, the lord steward adjourned this House to Westminster Hall; and the Peers being all set there in their places, the lord steward commanded the lieutenant of the Tower to bring forth the Earl of Strafford to the bar; which being done, the lord steward signified, that both sides might make a re-collection of their evidence, and the Earl of Strafford to begin first. Lords' Journals, 17 Ch. I. Die Sabbat videlicet 10 Aprilis.

"Hereupon Mr. Glynn desired, that before the Earl of Strafford began, that the Commons might produce two witnesses to the fifteenth and twenty-third articles, to prove that there be two men whose names are Berne; and so a mistake will be made clear. The Earl of Strafford desired, that no new witnesses may be admitted against him, unless he might be permitted to produce witnesses on his part likewise; which the Commons consented to, so the Earl of Strafford would confine himself to those articles upon which he made reservations; but he not agreeing to that, and the Commons insisting upon it, the House was adjourned to the usual place above, to consider of it; and after some debate, their lordships thought it fit; That the members of the Commons go on in producing new witnesses, as they shall think fit, to the fifteenth and twenty-third articles; and that the Earl of Strafford may presently produce such witnesses as are present; and such as are not, to name them presently,

and to proceed on Monday next; and also, if the Commons and Earl of Strafford will proceed upon any other articles, upon new matter, they are to name the witnesses and articles on both sides presently, and to proceed on Monday next; but both sides may waive it if they will. The lord steward adjourned this House to Westminster Hall; and, being returned thither, signified what the Lords had thought fit for the better proceeding in the business. The Earl of Strafford, upon this, desiring not to be limited to any reservation, but to be at liberty for what articles are convenient "for him to fortify with new witnesses;* to which the Commons not assenting, and for other scruples which did arise in the case, one of the Peers did desire that the House might be adjourned, to consider further of the particulars. Hereupon the lord steward adjourned the House to the usual place above. The Lords, being come up into the House, fell into debate of the business; and for the better informing of their judgments what was the course and common justice of the kingdom, propounded this question to the judges; Whether it be according to the course of practice and common justice, before the judges in their several courts, for the prosecutors in behalf of the king, *during the time of trial, to produce witnesses to discover the truth*, and whether the prisoner may not do the like? The lord chief justice delivered this, as the unanimous opinions of himself and all the rest of the judges: That, according to the course of practice, and common justice, before them in their several courts, upon trial by jury, *as long as the prisoner is at the bar, and the jury not sent away*, either side may give their evidence, and examine witnesses to discover truth; and this is all the opinion as we can give concerning the proceedings before us. Upon some consideration after this the House appointed the Earl of Bath, Earl of South'ton, Earl of Hartford, Earl of Essex, Earl of Bristoll, and the Lord Viscount Say et Seale, To draw up some reasons upon which the former order was made; which being read as followeth, were approved of, as the order of the House: The gentlemen of the House of Commons did declare, that they challenge to themselves, by the common justice of the kingdom, that they, being prosecutors for the king, may bring any new proofs by witnesses during the time of the evidence being not fully concluded, The Lords, being judges,

* Bis in originali.

and so equal to them and the prisoner, conceived this their desire to be just and reasonable; and also that, by the same common justice, the prisoner may use the same liberty; and that, to avoid any occasions of delay, the Lords thought fit that the articles and witnesses be presently named, and such as may be presently produced to be used presently; and no further time to be given. The lord steward was to let them know, that if they will on both sides waive the use of new witnesses, they may proceed to the re-collection of their evidence on both sides; if both sides will not waive it, then the lord steward is to read the precedent order; and, if they will not proceed then, this House is to adjourn and rise."

By this it will appear to the House, how much this exclusion of evidence, *brought for the discovery of truth*, is unsupported either by parliamentary precedent, or by the rule as understood in the common law courts below; and your committee (protesting however against being bound by any of the technical rules of inferior courts) thought and think they had a right to see such a body of precedents and arguments for the rejection of evidence during trial, in some court or other, before they were in this matter stopped and concluded.

Your committee has not been able to examine every criminal trial in the voluminous collection of the state trials, or elsewhere; but having referred to the most laborious compiler of law and equity, Mr. Viner, who has allotted a whole volume to the title of evidence, we find but one ruled case in a trial at common law, before or since, where new evidence for the discovery of truth has been rejected, as not being in due time. "A privy verdict had been given in B. R. 14 Eliz. for the defendant, but afterwards before the inquest gave their verdict openly, the plaintiff prayed that he might give more evidence to the jury, he having (as it seemed) discovered that the jury had found against him, but the justices would not admit him to do so: but after that Southcote, J. had been in C. B. to ask the opinion of the justices there, they took the verdict." In this case the offer of new evidence was not during the trial. The trial was over. The verdict was actually delivered to the judge. There was also an appearance that the discovery of the actual finding had suggested to the plaintiff the production of new evidence—

Dal. 80. Pl. 18. Anno 24 Eliz. apud Viner Evid. p. 60.

yet it appeared to the judges so strong a measure to refuse evidence, whilst any, even formal, appearance remained that the trial was not closed, that they sent a judge from the bench into the Common Pleas to obtain the opinion of their brethren there, before they could venture to take upon them to consider the time for production of evidence as elapsed. The case of refusal, taken with its circumstances, is full as strong an example in favour of the report of the judges in Lord Strafford's case, as any precedent of admittance can be.

State Trials, vol. iv. p. 508.

The researches of your committee not having furnished them with any cases in which evidence has been rejected during the trial, as being out of time, we have found some instances in which it has been actually received; and received not to repel any new matter in the prisoner's defence—but when the prisoner had called all his witnesses, and thereby closed his defence. A remarkable instance occurred on the trial of Harrison, for the murder of Dr. Clenche. The justices who tried the cause, (viz.) Lord Chief Justice Holt, and the Justices Atkins and Nevil, admitted the prosecutor to call new evidence, for no other reason but that a new witness was then come into court, who had not been in court before. These justices apparently were of the same opinion on this point with the justices who gave their opinion in the case of Lord Strafford. Your committee on this point, as on the former, cannot discover any authority for the decision of the House of Lords in the law of parliament, or in the law practice of any court of this kingdom.

PRACTICE BELOW.

Your committee not having learned that the resolutions of the judges (by which the Lords have been guided) were supported by any authority in law to which they could have access, have heard by rumour, that they have been justified upon the practice of the courts, in ordinary trials by commission of Oyer and Terminer. To give any legal precision to this term of *practice*, as thus applied, your committee apprehends it must mean—that the judge in those criminal trials has so regularly rejected a certain kind of evidence when offered there, that it is to be regarded in the light of a case frequently determined by legal authority. If such had

been discovered, though your committee never could have allowed these precedents as rules for the guidance of the high court of parliament, yet they should not be surprised to see the inferior judges forming their opinions on their own confined practice. Your committee, in their inquiry, has found comparatively few reports of criminal trials, except the collection under the title of State Trials, a book compiled from materials of very various authority, and in none of those which we have seen is there, as appears to us, a single example of the rejection of evidence, similar to that rejected by the advice of the judges in the House of Lords. Neither, if such examples did exist, could your committee allow them to apply directly and necessarily as a measure of reason to the proceedings of a court constituted so very differently from those in which the common law is administered. In the trials below, the judges decide on the competency of the evidence before it goes to the jury, and (under the correctives in the use of their discretion stated before in this report) with great propriety and wisdom. Juries are taken promiscuously from the mass of the people; they are composed of men who in many instances, in most perhaps, never were concerned in any causes, judicially or otherwise, before the time of their service. They have generally no previous preparation or possible knowledge of the matters to be tried, or what is applicable or inapplicable to them; and they decide in a space of time too short for any nice or critical disquisition. The judges, therefore, of necessity, must forestall the evidence where there is a doubt on its competence, and indeed observe much on its credibility, or the most dreadful consequences might follow. The institution of juries, if not thus qualified, could not exist. Lord *Mansfield* makes the same observation with regard to another corrective of the short mode of trial—that of a *new trial*.

This is the law, and this its policy. The jury are not to decide on the competency of witnesses, or of any other kind of evidence, in any way whatsoever. Nothing of that kind can come before them. But the Lords in the high court of parliament are not, either actually or virtually, a jury. No legal power is interposed between them and evidence; they are themselves by law fully and exclusively equal to it. They are persons of high rank, generally of the best education, and of

sufficient knowledge of the world; and they are a permanent, a settled, a corporate, and not an occasional and transitory judicature. But it is to be feared, that the authority of the judges (in the case of juries legal) may, from that example, weigh with the Lords further than its reason, or its applicability to the judicial capacity of the Peers, can support. It is to be feared, that if the Lords should think themselves bound implicitly to submit to this authority, that at length they may come to think themselves to be no better than jurors, and may virtually consent to a partition of that judicature, which the law has left to them whole, supreme, uncontrolled, and final.

This final and independent judicature, because it is final and independent, ought to be very cautious with regard to the rejection of evidence. If incompetent evidence is received by them, there is nothing to hinder their judging upon it afterwards according to its value. It may have no weight in their judgment; but if, upon advice of others, they previously reject information necessary to their proper judgment, they have no intermediate means of setting themselves right, and they injure the cause of justice without any remedy. Against errors of juries there is remedy by a new trial; against errors of judges there is remedy, in civil causes, by demurrer and bills of exceptions; against their final mistake there is remedy by writ of error, in courts of common law. In Chancery there is a remedy by appeal. If they wilfully err in the rejection of evidence there was formerly the terror existing of punishment by impeachment of the Commons;—but with regard to the Lords, there is no remedy for error, no punishment for a wilful wrong.

Your committee conceives it not improbable, that this apparently total and unreserved submission of the Lords to the dictates of the judges of the inferior courts (no proper judges in any light, or in any degree, of the law of parliament) may be owing to the very few causes of *original* jurisdiction, and the great multitude of those of *appellate* jurisdiction, which come before them. In cases of appeal or of error (which is in the nature of an appeal) the court of appeal is obliged to judge, not by its *own* rules, acting in another capacity, or by those which it shall choose *pro re nata* to make, but by the rules of the inferior court from whence the ap-

peal comes; for the fault or the mistake of the inferior judge is that he has not proceeded as he ought to do according to the law which he was to administer; and the correction, if such shall take place, is to compel the court from whence the appeal comes, to act as originally it ought to have acted according to law, as the law ought to have been understood and practised in that tribunal. The Lords, in such cases of necessity, judge on the grounds of the law, and practice of the courts below; and this they can very rarely learn with precision, but from the body of the judges. Of course much deference is, and ought to be, had to their opinions. But by this means a confusion may arise (if not well guarded against) between what they do in their *appellate* jurisdiction, which is frequent, and what they ought to do in their *original* jurisdiction, which is rare; and by this the whole original jurisdiction of the Peers, and the whole law and usage of parliament, at least in their virtue and spirit, may be considerably impaired.

After having thus submitted to the House the general tenor of the proceedings in this trial, your committee will, with all convenient speed, lay before the House the proceedings on each head of evidence separately, which has been rejected; and this they hope will put the House more perfectly in possession of the principal causes of the length of this trial, as well as of the injury which parliamentary justice may, in their opinion, suffer from those proceedings.

30*th April*, 1794.

APPENDIX.

I.

IN THE CASE OF EARL FERRERS.

April 17th, 1760.

Foster's Crown Law, Page 138. Fo. Edit.

Pa. 139.

THE House of Peers unanimously found Earl Ferrers guilty of the felony and murder whereof he stood indicted; and the Earl being brought to the bar, the high steward acquainted him therewith; and the House immediately adjourned to the chamber of parliament: And having put the following question to the judges, adjourned to the next day.

"Supposing a peer, so indicted and convicted, ought by law to receive judgment as aforesaid, and the day appointed by the judgment for execution should lapse before such execution done, whether a new time may be appointed for the execution, and by whom?"

On the eighteenth, the House then sitting in the chamber of parliament, the lord chief baron, in the absence of the chief justice of the Common Pleas, delivered, in writing, the opinion of the judges, which they had agreed on and reduced into form that morning. His lordship added many weighty reasons in support of the opinion; which he urged with great strength and propriety, and delivered with a becoming dignity.

TO THE SECOND QUESTION.

"Supposing the day appointed by the judgment for execution should lapse before such execution done, (which, however, the law will not presume,) we are all of opinion, that a new time may be appointed for the execution, either by the high court of parliament, before which such peer shall have been attainted, or by the court of King's Bench, the parliament not then sitting: the record of the attainder being properly removed into that court."

Pa. 140.

The reasons upon which the judges founded their answer to the question relating to the further proceedings of the House after the high steward's commission dissolved, which is usually done upon pronouncing judgment, may possibly require some further discussion. I will, therefore, before I conclude, mention those which weighed with me, and, I believe, with many others of the judges.

REASONS, &c.

Foster's Crown Law, Pa. 142 to 153.

Every proceeding in the House of Peers acting in its judicial capacity, whether upon writ of error, impeachment, or indictment, removed thither by certiorari, is in judgment of law a proceeding before the king in parliament: And therefore the House, in all those cases, may not improperly be styled, The court of our lord the king in parliament. This court is founded upon immemorial usage, upon the law and custom of parliament, and is part of the original system of our constitution. It is open for all the purposes of judicature during the continuance of the parliament: It openeth at the beginning and shutteth at the end of every session; just as the court of King's Bench, which is likewise in judgment of law held before the king himself, openeth and shutteth with the term. The authority of this court, or, if I may use the expression, its constant activity for the ends of public justice, independent of any special powers derived from the Crown, is not doubted in the case of writs of error from those courts of law whence error lieth in parliament, and of impeachments for misdemeanours.

It was formerly doubted, whether, in the case of an impeachment for treason, and in the case of an indictment against a peer for any capital crime, removed into parliament by certiorari, whether in these cases the court can proceed to trial and judgment, without a high steward, appointed by special commission from the Crown. This doubt seemeth to have arisen from the not distinguishing between a proceeding in the court of the high steward, and that before the king in parliament. The name, style, and title of office is the same in both cases; but the office, the powers and pre-eminences annexed to it, differ very widely; and so doth the constitution of the courts where the offices are executed. The

identity of the name may have confounded our ideas, as equivocal words often do, if the nature of things is not attended to; but the nature of the offices, properly stated, will I hope remove every doubt on these points. In the court of the high steward, he alone is judge in all points of law and practice; the Peers triers are merely judges of fact, and are summoned by virtue of a precept from the high steward, to appear before him on the day appointed by him for the trial, Ut Rei Veritas melius sciri poterit. The high steward's commission, after reciting that indictment hath been found against the peer by the grand jury of the proper country, impowereth him to send for the indictment, to convene the prisoner before him, at such day and place as he shall appoint, then and there to hear and determine the matter of such indictment; cause the Peers triers tot et tales, per quos Rei Veritas melius sciri poterit, at the same day and place to appear before him, Veritateque inde compertâ, to proceed to judgment according to the law and custom of England, and thereupon to award execution.[1] By this it is plain that the sole right of judicature is in cases of this kind vested in the high steward: that it resideth solely in the person; and consequently without the commission, which is but in nature of a commission of Oyer and Terminer, no one step can be taken in order to a trial; and that when his commission is dissolved, which he declareth by breaking his staff, the court no longer existeth.

But in a trial of a peer in full parliament, or, to speak with legal precision, before the king in parliament, for a capital offence, whether upon impeachment or indictment, the case is quite otherwise: every peer present at the trial, and every temporal peer hath a right to be present in every part of the proceeding, voteth upon every question of law and fact; and the question is carried by the major vote, the high steward himself voting merely as a peer and member of that court, in common with the rest of the Peers, and in no other right.

It hath indeed been usual, and very expedient it is, in point of order and regularity, and for the solemnity of the proceeding, to appoint an officer for presiding during the time

[1] See Lord Clarendon's commission as high steward, and the writs and precepts preparatory to the trial, in Lord Morley's case. VII. St. Tri.

of the trial, and until judgment, and to give him the style and title of steward of England; but this maketh no sort of alteration in the constitution of the court; it is the same court founded in immemorial usage, in the law and custom of parliament, whether such appointment be made or not. It acteth in its judicial capacity in every order made touching the time and place of the trial, the postponing the trial from time to time upon petition, according to the nature and circumstances of the case, the allowance or non-allowance of counsel to the prisoner, and other matters relative to the[1] trial; and all this before a high steward hath been appointed. And so little was it apprehended, in some cases which I shall mention presently, that the existence of the court depended on the appointment of a high steward, that the court itself directed in what manner, and by what form of words, he should be appointed. It hath likewise received and recorded the prisoner's confession, which amounteth to a conviction, before the appointment of a high steward; and hath allowed to prisoners the benefit of acts of general pardon, where they appeared entitled to it, as well with the appointment of a high steward, as after his commission dissolved. And when, in the case of impeachments, the Commons have sometimes, at conferences between the Houses, attempted to interpose in matters preparatory to the trial, the general answer hath been, "This is a point of judicature upon which the Lords will not confer; they impose silence upon themselves," or to that effect. I need not here cite instances; every man who hath consulted the journals of either House hath met with many of them.

I will now cite a few cases, applicable, in my opinion, to the present question. And I shall confine myself to such as have happened since the restoration; because, in questions of this kind, modern cases, settled with deliberation, and upon a view of former precedents, give more light and satisfaction than the deepest search into antiquity can afford. And also because the prerogatives of the Crown, the privileges of parliament, and the rights of the subject in general, appear to have been more studied, and better understood, at and for some years before that period, than in former ages.

[1] See the orders previous to the trial, in the cases of the Lords Kilmarnock, &c., and Lord Lovat, and many other modern cases.

Lords' Journ. In the case of the Earl of Danby, and the Popish lords then under impeachments, the Lords, on the 6th of May, 1769, appointed time and place for hearing the Earl of Danby, by his counsel, upon the validity of his plea of pardon, and for the trials of the other lords; and voted an address to his Majesty, praying that he would be pleased to appoint a high steward for those purposes. These votes were on the next day communicated to the Commons by message in the usual manner. On the 8th at the conference between the Houses, upon the subject matter of that message, the Commons expressed themselves to the following effect: "They cannot apprehend what should induce your lordships to address his Majesty for a high steward, for determining the validity of the pardon which hath been pleaded by the Earl of Danby, as also for the trial of the other five lords, because they conceive the constituting a high steward is not necessary, but that judgment may be given in parliament upon impeachment without a high steward;" and concluded with a proposition, that for avoiding any interruption or delay, a committee of both Houses might be nominated, to consider of the most proper ways and methods of proceeding. This proposition the House of Peers, after a long debate, rejected. *Dissentientibus*, Finch,[1] chancellor, and many other lords. However, on the 11th the Commons' proposition of the 8th was, upon a second debate, agreed to; and the lord chancellor, lord president, and ten other lords, were named of the committee, to meet and confer with a committee of the Commons. The next day the lord president reported, That the committees of both Houses met that morning, and made an entrance into the business referred to them; that the Commons desired to see the commissions that are prepared for a high steward at these trials, and also the commissions in the Lord Pembroke's and the Lord Morley's cases. That to this the Lords' committees said, "*The high steward is but speaker pro tempore, and giveth his vote as well as the other Lords; this changeth not the nature of the court*" And the Lords declared they have power enough to proceed to trial, though the king should not name a high steward.

[1] Afterwards Earl of Nottingham.

[2] In the Commons' journal of the 15th of May it standeth thus: Their lordships further declare to the committee, that a lord high steward was

That this seemed to be a satisfaction to the Commons, provided it was entered in the Lords' journals, which are records." Accordingly, on the same day, "*It is declared and ordered, by the Lords spiritual and temporal in parliament assembled, that the office of a high steward upon trials of peers upon impeachmen's, is not necessary to the House of Peers; but that the Lords may proceed in such trials if a high steward be not appointed according to their humble desire.*"[1] On the 13th the lord president reported, That the committees of both Houses had met that morning, and discoursed, in the first place, on the matter of a lord high steward, and had perused former commissions for the office of high steward; and then, putting the House in mind of the order and resolution of the preceding day, proposed from the committees that a new commission might issue, so as the words in the commission may be thus changed, viz. Instead of Ac pro eo quòd officium Seneschalli Angliæ (cujus præsentia in hac parte requiritur) ut accepimus jam vacat, may be inserted, Ac pro eo quòd proceres et magnates in parliamento nostro assemblati, nobis humiliter supplicaverunt ut Seneschallum Angliæ pro hac vice constituere dignaremur; to which the House agreed.[2]

It must be admitted that precedents drawn from times of ferment and jealousy, as these were, lose much of their weight, since passion and party prejudice generally mingle in the contest; yet let it be remembered, that these are resolutions in which both Houses concurred, and in which the rights of both were thought to be very nearly concerned; the Commons' right of impeaching with effect, and the whole judica-

made *hac vice* only. That notwithstanding the making of a lord high steward the court remained the same, and was not thereby altered, but still remained the court of Peers in parliament. That the lord high steward was but as a speaker or chairman, for the more orderly proceeding at the trials.

[1] This resolution my lord chief baron referred to and cited in his argument upon the second question proposed to the judges, which is before stated.

[2] This amendment arose from an exception taken to the commission by the committee for the Commons, which, as it then stood, did in their opinion imply that the constituting a lord high steward was necessary. Whereupon it was agreed by the whole committee of Lords and Commons, that the commission should be recalled. and a new commission, according to the said amendment, issued, to bear date after the order and resolution of the 12th (Commons' Journal of the 15th of May).

ture of the Lords in capital cases. For if the appointment of a high steward was admitted to be of absolute necessity, (however necessary it may be for the regularity and solemnity of the proceeding during the trial, and until judgment, which I do not dispute,) every impeachment may, for a reason too obvious to be mentioned, be rendered ineffectual; and the judicature of the Lords, in all capital cases, nugatory.

It was from a jealousy of this kind, not at that juncture altogether groundless, and to guard against everything from whence the necessity of a high steward in the case of an impeachment might be inferred, that the Commons proposed, and the Lords readily agreed to, the amendment in the steward's commission, which I have already stated. And it hath, I confess, great weight with me, that this amendment, which was at the same time directed in the cases of the five Popish lords, when commissions should pass for their trials, hath taken place, in every commission upon impeachments for treason, since that time.[1] And I cannot help remarking, that in the case of Lord Lovat, when neither the heat of the times, nor the jealousy of parties, had any share in the proceeding, the House ordered, "That the commission for appointing a lord high steward shall be in the like form as that for the trial of the Lord Viscount Stafford, as entered in the journal of this House, on the 30th of November, 1680, except that the same shall be in the English language."[2]

I will make a short observation on this matter.

The order, on the 13th of May, 1679, for varying the form of the commission, was, as appeareth by the journal, plainly made in consequence of the resolution of the 12th, and was founded on it; and consequently the constant unvarying practice with regard to the new form goeth, in my opinion, a great way towards showing, that in the sense of all succeeding times, that resolution was not the result of faction, or a blameable jealousy, but was founded in sound reason and true policy. It may be objected, that the resolution of the 12th of May, 1679, goeth no further than to a proceeding upon impeachment. The letter of the resolution, it is ad-

[1] See in the State Trials, the commissions in the cases of the Earl of Oxford, Earl of Derwentwater, and others—Lord Winton and Lord Lovat.

[2] See the proceedings printed by order of the House of Lords (4th February, 1746).

mitted, goeth no further; but this is easily accounted for: A proceeding by impeachment was the subject matter of the conference, and the Commons had no pretence to interpose in any other. But what say the Lords? The high steward is but as a speaker or chairman, *pro tempore*, for the more orderly proceedings at the trials; the appointment of him doth not alter the nature of the court, which still remaineth the court of the Peers in parliament. From these premises they draw the conclusion I have mentioned. Are not these premises equally true in the case of a proceeding upon indictment?—They undoubtedly are.

It must likewise be admitted, that in the proceeding upon indictment, the high steward's commission hath never varied from the ancient form in such cases. The words objected to by the Commons, *Ac pro eo quòd officium Seneschalli Angliæ (cujus præsentia in hac parte requiritur) ut accepimus jam vacat*, are still retained; but this proveth no more than that the great seal, having no authority to vary in point of form, hath from time to time very prudently followed ancient precedents.

I have already stated the substance of the commission, in a proceeding in the court of the high steward. I will now state the substance of that in a proceeding in the court of the Peers in parliament. And shall make use of that in the case of the Earl of Kilmarnock and others, as being the latest, and, in point of form, agreeing with the former precedents. The commission, after reciting that William Earl of Kilmarnock, &c. stand indicted before commissioners of gaol delivery, in the county of Surrey, for high treason, in levying war against the king; and that the king intendeth that the said William Earl of Kilmarnock, &c. shall be heard, examined, sentenced, and adjudged before himself, in this present parliament, touching the said treason, and for that the office of steward of Great Britain (whose presence is required upon this occasion) is now vacant, as we are informed, appointeth the then lord chancellor steward of Great Britain, to bear, execute, and exercise (for this time) the said office, with all things due and belonging to the same office, in that behalf.

What, therefore, are the things due and belonging to the office in a case of this kind? Not as in the court of the high steward, a right of judicature; for the commission itself

supposeth that right to reside in a court then subsisting before the king in parliament. The parties are to be there heard, sentenced, and adjudged. What share in the proceeding doth the high steward then take? By the practice and usage of the court of the Peers in parliament he giveth his vote as a member thereof with the rest of the Peers; but for the sake of regularity and order, he presideth during the trial, and until judgment, as chairman or speaker, *pro tempore*. In that respect, therefore, it may be properly enough said, that his presence is required during the trial, and until judgment, and in no other. Herein I see no difference between the case of an impeachment and of an indictment. I say during the time of the trial, and until judgment, because the court hath, as I observed before, from time to time done various acts, plainly judicial, before the appointment of a high steward, and where no high steward hath ever been appointed, and even after the commission dissolved. I will to this purpose cite a few cases.

I begin with the latest, because they are the latest, and were ruled with great deliberation; and, for the most part, upon a view of former precedents. In the case of the Earl of Kilmarnock and others, the Lords, on the 24th of June, 1746, ordered, that a writ or writs of certiorari be issued for removing the indictments before the House; and on the 26th the writ, which is made returnable before the king in parliament, with the return and indictments, was received and read. On the next day, upon the report of the Lords' committees, that they had been attended by the two chief justices, and chief baron, and had heard them, touching the construction of the Act of the 7th and 8th of King William, "For regulating trials in cases of high treason and misprision of treason," the House, upon reading the report, came to several resolutions, founded for the most part on the construction of that Act. What that construction was, appeareth from the lord high steward's address to the prisoners, just before their arraignment. Having mentioned that Act, as one happy consequence of the revolution, he addeth, "However injuriously that revolution hath been traduced, whatever attempts have been made to subvert this happy establishment founded on it, your lordships will now have the benefit of that in its full extent."

I need not, after this, mention any other judicial acts done by the House in this case, before the appointment of the high steward—many there are. For, the putting a construction upon an act relative to the conduct of the court, and the right of the subject at the trial, and in the proceedings preparatory to it, and this in a case entirely new, and upon a point, to say no more in this place, not extremely clear, was undoubtedly an exercise of authority proper only for a court having full cognizance of the cause.

I will not minutely enumerate the several orders made preparatory to the trial of Lord Lovat, and in the several cases I shall have occasion to mention, touching the time and place of the trial, the allowance or non-allowance of counsel, and other matters of the like kind, all plainly judicial, because the like orders occur in all the cases where a journal of the preparatory steps hath been published by order of the Peers. With regard to Lord Lovat's case, I think the order directing the form of the high steward's commission, which I have already taken notice of, is not very consistent with the idea of a court whose powers can be supposed to depend, at any point of time, upon the existence or dissolution of that commission.

In the case of the Earl of Derwentwater, and the other Lords impeached at the same time, the House received and recorded the confessions of those of them who pleaded guilty, long before the teste of the high steward's commission, which issued merely for the solemnity of giving judgment against them upon their conviction. This appeareth by the commission itself: It reciteth, that the Earl of Derwentwater, and others, Coram nobis in præsenti parliamento, had been impeached by the Commons for high treason, and had, Coram nobis in præsenti parliamento, pleaded guilty to that impeachment; and that the king, intending that the said Earl of Derwentwater and others, de et proditione unde ipsi ut præfertur impetit', accusit', et convict' existunt coram nobis in præsenti parliamento, secundum legem et consuetudinem hujus regni nostri Magnæ Britanniæ, audientur, sententientur, et adjudicentur constituteth the then lord chancellor high steward (hac vice) to do and execute all things which to the office of high steward and in that behalf do belong. The receiving and recording the confession of the prisoners, which amounted to a conviction, so that nothing remained but pro-

ceeding to judgment, was certainly an exercise of judicial authority, which no assembly, how great soever, not having full cognizance of the cause, could exercise.

See the Journals of the Lords.

In the case of Lord Salisbury, who had been impeached by the Commons for high treason, the Lords, upon his petition, allowed him the benefit of the act of general pardon passed in the 2nd year of William and Mary, so far as to discharge him from his imprisonment upon a construction they put upon that Act, no high steward ever having been appointed in that case. On the 2nd of October, 1690, upon reading the Earl's petition, setting forth that he had been a prisoner for a year and nine months in the Tower, notwithstanding the late Act of free and general pardon, and praying to be discharged, the Lords ordered the judges to attend on the Monday following, to give their opinions, whether the said Earl be pardoned by the Act. On the 6th the judges delivered their opinions, that if his offence was committed before the 13th of February, 1688, and not in Ireland, or beyond the seas, he is pardoned. Whereupon it was ordered, that he be admitted to bail, and the next day he and his sureties entered into a recognisance of bail, himself in £10,000 and two sureties in £5000 each; and on the 30th he and his sureties were, after a long debate, discharged from their recognisance. It will not be material to inquire, whether the House did right in discharging the Earl, without giving the Commons an opportunity of being heard; since, in fact, they claimed and exercised a right of judicature without a high steward—which is the only use I make of this case.

They did the same in the case of the Earl of Carnwarth, the Lords Widdrington and Nairn, long after the high steward's commission dissolved. These lords had judgment passed on them at the same time that judgment was given against the Lords Derwentwater, Nithsdale, and Kenmure; and judgment being given, the high steward immediately broke his staff, and declared the commission dissolved. They continued prisoners in the Tower under reprieves till the passing of the Act of general pardon, in the 3rd of King George the First. On the 21st of November, 1717, the House being informed that these lords had severally entered into recognisances before one of the judges

Lords' Journals.

of the court of King's Bench, for their appearance in the House in this sessions of parliament; and that the Lords Carnwarth and Widdrington were attended accordingly; and that the Lord Nairn was ill at Bath, and could not then attend, the Lords Carnwarth and Widdrington were called; and severally at the bar prayed that their appearance might be recorded; likewise prayed the benefit of the Act for his Majesty's general and free pardon. 3 G. I. c. 19. Whereupon the House ordered, that their appearance be recorded, and that they attend again to-morrow, in order to plead the pardon. And the recognisance of the Lord Nairn was respited till that day fortnight. On the morrow the Lords Carnwarth and Widdrington, then attending, were called in; and the lord chancellor acquainted them severally, that it appeared by the records of the House, that they severally stood attainted of high treason; and asked them severally, what they had to say, why they should not be remanded to the Tower of London? Thereupon they severally, upon their knees, prayed the benefit of the Act, and that they might have their lives and liberty pursuant thereunto. And the attorney-general, who then attended for that purpose, declaring that he had objection, on his Majesty's behalf, to what was prayed, conceiving that those lords, not having made any escape since their conviction, were entitled to the benefit of the Act; the House, after reading the clause in the Act relating to that matter, agreed that they should be allowed the benefit of the pardon, as to their lives and liberties; and discharged their recognisances, and gave them leave to depart without further day given for their appearance. See Sect. 54 of the 3 G. I.

On the 6th of December following the like proceedings were had, and the like orders made, in the case of Lord Nairn. I observe, that the lord chancellor did not ask these lords what they had to say why execution should not be awarded. There was, it is probable, some little delicacy as to that point. But since the allowance of the benefit of the Act, as to life and liberty, which was all that was prayed, was an effectual bar to any future imprisonment on that account, and also to execution, and might have been pleaded as such in any court whatsoever; the whole proceeding must be admitted to have been in a court having complete juris-

diction in the case, notwithstanding the high steward's commission had been long dissolved—which is all the use I intended to make of this case.

I will not recapitulate; the cases I have cited, and the conclusions drawn from them, are brought into a very narrow compass. I will only add, it would sound extremely harsh to say, that a court of criminal jurisdiction, founded in immemorial usage, and held in judgment of law before the king himself, can in any event whatever be under an utter incapacity of proceeding to trial and judgment, either of condemnation or acquittal, the ultimate objects of every criminal proceeding, without certain supplemental powers derived from the Crown.

These cases, with the observations I have made on them, I hope sufficiently warrant the opinion of the judges upon that part of the second question in the case of the late Earl Ferrers, which I have already mentioned. And also what was advanced by the lord chief baron in his argument on that question, "That though the office of high steward should happen to determine before execution done according to the judgment, yet the court of the Peers in parliament, where that judgment was given, would subsist for all the purposes of justice during the sitting of the parliament." And consequently that in the case supposed by the question, that court might appoint a new day for the execution.

II.

QUESTIONS referred by the LORDS to the JUDGES, in the Impeachment of WARREN HASTINGS, ESQUIRE; and the ANSWERS of the JUDGES.—Extracted from the Lords' Journals and Minutes.

FIRST.

Question.—Whether, when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it be competent for such prosecutor to pursue such examination, by proposing

a question containing the particulars of an answer supposed to have been made by such witness before a committee of the House of Commons, or in any other place; and by demanding of him whether the particulars so suggested were not the answer he had so made?

1788, February 29.—Pa. 418.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges, upon the question of law put to them on Friday the 29th of February last, as follows—"That when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it is not competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made by such witness before a committee of the House of Commons, or in any other place; and by demanding of him whether the particulars so suggested were not the answers he had so made."

1788, April 10.—Pa. 592.

SECOND.

Question.—Whether it be competent for the managers to produce an examination taken without oath by the rest of the council in the absence of Mr. Hastings the governor-general, charging Mr. Hastings with corruptly receiving three lacks 54,105 rupees, which examination came to his knowledge, and was by him transmitted to the court of directors as a proceeding of the said councillors, in order to introduce the proof of his demeanour thereupon;—it being alleged by the managers for the Commons, that he took no steps to clear himself, in the opinion of the said directors, of the guilt thereby imputed, but that he took active means to prevent the examination by the said councillors of his servant Cantoo Baboo? 1789, May 14.—Pa. 677.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges, upon the said question, in the negative—and gave his reasons.

1789, May 20.—Pa. 718.

THIRD.

Question.—Whether the instructions from the court of directors of the united company of merchants of England trading to the East Indies to Warren Hastings, Esquire, governor-general; Lieutenant-General John Clavering, the Honourable George Monson, Richard Barwell, Esquire, and Philip Francis, Esquire, councillors, constituted and appointed the governor-general and council of the said united company's presidency of Fort William in Bengal, by an act of parliament passed in the last session, intituled, "An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe;" of the 29th of March, 1774, Par. 31, 32, and 35; the consultation of the 11th March, 1775; the consultation of the 13th of March, 1775, up to the time that Mr. Hastings left the council; the consultation of the 20th of March, 1775; the letter written by Mr. Hastings to the court of directors on the 25th of March, 1775—it being alleged that Mr. Hastings took no steps to explain or defend his conduct—are sufficient to introduce the examination of Nundcomar, or the proceedings of the rest of the councillors on the said 13th of March, after Mr. Hastings left the council, such examination and proceedings charging Mr. Hastings with corruptly receiving three lacks 54,105 rupees?

1789, May 21.—Pa. 730.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges, upon the said question, in the negative—and gave his reasons.

1789, May 27.—Pa. 771.

FOURTH.

Question.—Whether the public accounts of the Nizamut and Bhela, under the seal of the Begum attested also by the Nabob, and transmitted by Mr. Goring to the board of council at Calcutta, in a letter bearing date the 29th June, 1775, received by them, recorded without objection on the part of Mr. Hastings, and transmitted by him likewise without objection to the court of directors, and alleged to contain accounts of money received by Mr. Hastings; and it being in proof that Mr. Hastings, on the 11th of May,

1778, moved the board to comply with the requisitions of the Nabob Mowbarek ul Dowla, to re-appoint the Munny Begum and Rajah Goordass (who made up those accounts) to the respective offices they before filled—and which was accordingly resolved by the board—ought to be read?

1789, June 17.—Pa. 855.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges, upon the said question, in the negative—and gave his reasons.

1789, June 24.—Pa. 922.

FIFTH.

Question.—Whether the paper delivered by Sir Elijah Impey, on the 7th of July, 1775, in the supreme court, to the secretary of the supreme council, in order to be transmitted to the council as the resolution of the court in respect to the claim made for Roy Radachurn. on account of his being Vakeel of the Nabob Mobarek ul Dowlah—and which paper was the subject of the deliberation of the council on the 31st July, 1775, Mr. Hastings being then present, and by them transmitted to the court of directors, as a ground for such instructions from the court of directors as the occasion might seem to require—may be admitted as evidence of the actual state and situation of the Nabob, with reference to the English government? 1789, July 2.—Pa. 1001.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges, upon the said question, in the affirmative—and gave his reasons.

1789, July 7.—Pa. 1030.

SIXTH.

Question.—Whether it be, or be not, competent to the managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge, to Kelleram, fell into arrear and was deficient—and whether, if proof were offered that the rent fell into arrear immediately after the letting, the evidence would in that case be competent.

1790, April 22.—Pa. 361.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges upon the said question—"That it is not competent to the managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge to Kelleram, fell into arrear, and was deficient"—and gave his reasons. 1790, April 27.—Pa. 388.

SEVENTH.

Question.—Whether it be competent for the managers for the Commons to put the following question to the witness upon the sixth article of charge; viz. "What impression the letting of the lands to Kelleram and Cullian Sing made on the minds of the inhabitants of that country?"

1790, April 27.—Pa. 391.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges upon the said question—"That it is not competent to the managers for the Commons to put the following question to the witness, upon the sixth article of charge; viz. What impression the letting of the lands to Kelleram and Cullian Sing made on the minds of the inhabitants of that country"—and gave his reasons.

1790, April 29.—Pa. 413.

EIGHTH.

Question.—Whether it be competent to the managers for the Commons to put the following question to the witness, upon the seventh article of charge; viz. "Whether more oppressions did actually exist under the new institution than under the old?" 1790, April 29.—Pa. 415.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges upon the said question, "That it is not competent to the managers for the Commons to put the following question to the witness, upon the seventh article of charge; viz. Whether more oppressions did actually exist under the new institution than under the old"—and gave his reasons. 1790, May 4.—Pa. 428.

NINTH.

Question.—Whether the letter of the 13th April, 1781, can be given in evidence by the managers for the Commons, to prove that the letter of the 5th of May, 1781, already given in evidence, relative to the abolition of the provincial council, and the subsequent appointment of the committee of revenue, was false in any other particular than that which is charged in the 7th article of charge? 1790, May 20.—Pa. 557.

Answer.—The lord chief baron of the court of Exchequer delivered the unanimous opinion of the judges upon the said question—"That it is not competent for the managers on the part of the Commons to give any evidence on the seventh article of impeachment, to prove that the letter of the 5th May, 1781, is false in any other particular than that wherein it is expressly charged to be false"—and gave his reasons.
1790, June 2.—Pa. 634.

TENTH.

Question.—Whether it be competent to the managers for the Commons to examine the witness to any account of the debate which was had on the 9th day of July, 1778, previous to the written minutes that appear upon the consultation of that date? 1794, February 25.—Lords' Minutes.

Answer.—The lord chief justice of the court of Common Pleas delivered the unanimous opinion of the judges upon the said question—"That it is not competent to the managers for the Commons to examine the witness, Philip Francis, Esquire, to any account of the debate which was had on the 9th day of July, 1778, previous to the written minutes that appear upon the consultation of that date"—and gave his reasons. 1794, February 27.—Lords' Minutes.

ELEVENTH.

Question.—Whether it is competent for the managers for the Commons, in reply, to ask the witness, whether, between the time of the original demand being made upon Cheit Sing, and the period of the witness's leaving Bengal, it was at any time in his power to have reversed or put a stop to the de-

mand upon Cheit Sing, the same not being relative to any matter originally given in evidence by the defendant?
1794, February 27.—Lords' Minutes.

Answer.—The lord chief justice of the court of Common Pleas delivered the unanimous opinion of the judges upon the said question—"That it is not competent for the managers for the Commons to ask the witness, whether between the time of the original demand being made upon Cheit Sing and the period of his leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheit Sing, the same not being relative to any matter originally given in evidence by the defendant"—and gave his reasons. 1794, March 1.—Lords' Minutes.

TWELFTH.

Question.—Whether a paper, read in the court of directors on the 4th of November, 1783, and then referred by them to the consideration of the committee of the whole court; and again read in the court of directors on the 19th of November, 1783, and amended, and ordered by them to be published for the information of the proprietors, can be received in evidence, in reply, to rebut the evidence given by the defendant, of the thanks of the court of directors, signified to him on the 28th of June, 1785. 1794, March 1.—Lords' Minutes.

Answer.—Whereupon the lord chief justice of the court of Common Pleas, having conferred with the rest of the judges present, delivered their unanimous opinion upon the said question, in the negative—and gave his reasons.
1794, March 1.—Lords' Minutes.

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